United States Court of Appeals

for the Second Circuit

APPENDIX

74-2542

United States Court of Appeals

For the Second Circuit

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Docket No. 72-1064

CHRIS-CRAFT INDUSTRIES, INC.,
Plaintiff-Appellant,

against

PIPER AIRCRAFT CORPORATION, HOWARD PIPER, THOMAS F. PIPER, WILLIAM T. PIPER, JR., BANGOR PUNTA CORPORATION, NICOLAS M. SALGO, DAVID W. WALLACE, THE FIRST BOSTON CORPORATION, PAUL L. MILLER and N. BAYARD,
Defendants-Appellees.

Docket No. 72-1120

BANGOR PUNTA CORPORATION,
Plaintiff-Appellant,

against

CHRIS-CRAFT INDUSTRIES, INC.,
Defendant-Appellee.

Docket Nos. 72-1053 and 72-1140

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff-Appellant,

against

BANGOR PUNTA CORPORATION,
Defendant-Appellee (Cross-Appellant).

UNITED STATES COURT OF APPEALS
JAN 8 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPENDIX ON APPEAL FROM FINAL JUDGMENTS OF UNITED STATES DISTRICT COURT FOR SOUTHERN DISTRICT OF NEW YORK

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Counsel of Record Are Listed on Inside of Front Cover

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Q Now, had you scheduled a board of directors meeting to consider whether you should take shares above the 300,000 shares?

A Yes, we had scheduled a board meeting so that we could have the count. Mr. Gordon would be down at the bank because most of the tendered stock comes in the last day. So that we would have the count from the bank and we would be able to poll the board as to whether we wanted to take any overage or whether we didn't.

Q You scheduled the board of directors meeting for the last day; is that correct?

A That's correct. It was the evening.

Q Had you considered how you could have gotten additional financing if you needed it?

A Yes.

Q And gotten it in time?

A Well, I think we were allowed to extend the tender offer so that if we got an overage, let's say, if we got 51 per cent, I believe, and I'm --what we could have done is taken the first three hundred and, you know, arranged the financing by extending it or some other way, to take the 51 per cent.

Q Do you recall how many shares you got on the tender offer?

A I believe it was like 306,000 or 307,000, something like that.

Q What conclusion did the board reach on that?

A We should take the overage.

Q Did you at that time have a view as to what you should do if you got 51 per cent of the stock tendered?

MR. PENNOYER: Objection. When?

THE COURT: Was that subject discussed by the board?

THE WITNESS: Preliminarily, yes.

THE COURT: Was there any resolution adopted?

THE WITNESS: No, there wasn't.

THE COURT: Objection sustained.

Q When did you decide to make an exchange offer of Chris-Craft securities for Piper?

A I believe there was a board meeting while I was out of the country at which they proposed that we study an exchange offer.

THE COURT: What were the dates of your being away?

THE WITNESS: I think the 9th of February, sir.

THE COURT: Until when?

THE WITNESS: The 20th-some-odd of Febzuary, 22, something like that. I would have to check my records to

be accurate.

Q Before you left did you express a view on whether an exchange offer should be made to the board?

A A broad view. We discussed with Len and Jim who were on the board that they felt very insecure and felt that we should make every effort to try and move for control. The exchange offer was the only way to do it.

Q Did you concur in that conclusion?

A Yes, it made sense.

Q Incidentally, did there come a time when you had a telephone conversation with W.T. Piper, Jr.?

A Yes, sir.

Q When was that?

A The morning of the 23rd before the market opened.

Q The 23rd of what?

A Of January.

Q What happened in the telephone conversation? Who called who?

A I called Mr. Piper.

Q Tell the Court of the conversation.

A I called Mr. Piper and I introduced myself on the phone, and I said I wanted to inform him that we were going to make a tender offer for Piper Aircraft stock and that I would like the opportunity to discuss with him some of our views and some of the areas that might be of mutual interest,

and I would like -- I would be available at any time he wanted, at any city he wanted, and I would like to have this conversation with him before he started making statements to the press or anything else, to the public.

Q What did he say?

A Well, the first -- actually there were two phone calls. The first one, I think he misunderstood and thought that I was calling about this thing in the Wall Street Journal that said that there were ~~merchant~~ merger negotiations with Chris-Craft, which he denied.

Q What did he say to you?

A He said something about, "I'm not interested." He was sort of vague. Then I was disconnected.

I told the secretary to get Mr. Piper back on the phone.

Q When you got him back on the phone, what did you say?

A I said I guess -- "I'm sorry, we were disconnected."

I went through the rest of the conversation.

Q Did you tell him who you were?

A Yes, I did.

Q Did you make arrangements to meet with Mr. Piper?

A Yes. I think through Mr. Erpf and Mr. Miller, Mr. Erpf of Loeb Rhoades and Mr. Miller of First Boston.

Q That meeting occurred the following day; is that correct?

A Yes.

Q It's a stipulated fact here that Chris-Craft filed its registration statement for an exchange offer on February 27th.

During the period that Chris-Craft was in registration did you purchase any Piper stock?

A We did.

Q How many shares?

A I think the number was 9000 shares.

Q It's a stipulated fact that it's 9100 shares.

What occasioned you to stop purchasing?

A I had a meeting with the Securities and Exchange Commission in Washington.

Q Was that the meeting of April 7, 1969?

A Yes, it was.

Q Following that meeting and during the period that you were in registration, and then thereafter while your exchange offer was outstanding, did you purchase a single share of Piper stock?

A Absolutely not.

Q Were any opportunities presented to you to buy Piper stock for cash during that period?

1538 A

A Yes, they were.

Q Would you enumerate them as specifically as you can for the Court.

A I had heard Mr. Cornfield wanted to sell his block, and that I was to call Mr. Cornfield, and after the conversation with the SEC I was not about to call Mr. Cornfield.

I was called by Mr. Jennison who had a block from, I believe it was, the Garner family, who offered it to us, and I said that we can't buy it and neither can anybody else that's in this situation.

Q Was Piper still being traded on the New York Stock Exchange during this period?

A Yes.

Q I direct your attention to May 7th, which is when you fixed and announced the terms of your exchange offer, and that is reflected in Finding 64, which, in substance, says that the package was to consist of a $2 convertible, preferred convertible into 2.4 shares of common and two warrants on a post-split basis of Crhis-Craft.

You recall that; do you not?

A Yes.

THE COURT: It wasn't two warrants, it was one warrant for two shares.

MR. LIMAN: One warrant for two shares. I think

we used that terminology here, your Honor, that one warrant for six shares is really six warrants; one warrant of 3.5 shares we say are 3.5 warrants. I apologize.

THE COURT: So you have changed the warrants. The warrants that you are talking about call for one share.

MR. LIMAN: That's right.

THE COURT: But the warrants that actually existed call for two shares.

MR. LIMAN: It's one warrant for two shares, right, your Honor.

THE COURT: All right.

BY MR. LIMAN:

Q Who participated on behalf of Chris-Craft in the decision to make this particular offer, to set this package?

A I did, Mr. Erpf, I think Mr. Sherill, investment bankers, Mr. Gordon, Mr. Rochlis, I believe.

Q Tell the Court how you arrived at the decision to offer this particular package. What were you trying to do? What was said?

A We were trying to get a package that would be worth over -- substantially over the market.

Q The market of Piper?

A Yes.

Q And did your investment bankers express views to

you as to what your preferred would sell at?

A Yes.

Q And what the warrants would sell at?

A They estimated what they would sell at.

Q Do you remember what the estimate was on May 7th?

A No, I don't.

Q Did you ever announce the estimate to the public?

A No.

Q On May 16th do you recall that you sweetened this package by adding $10 in cash?

A Yes, I do.

Q Would you tell the Court what discussions you had with your board with respect to increasing it by $10?

A Yes. We knew we had to sweeten the package. When the Bangor Punta announcement broke on the 8th, we knew that everybody was targeting in on a price tag that was announced. So we had to get a package that would come close to it in order to compete with it or top it. Our stock had gotten hurt very substantially with the Bangor announcement, so that we were now dealing with cheaper and cheaper stock. So I felt that the only way you could offset that deterioration was to make, you know, a sweetener in the form of cash first. We did the sweetener at $10, I believe.

Q Did you consult your investment bankers with

respect to what the package would be worth with the sweetener?

A I don't recall. Obviously we estimated what it would be worth. I don't recall the specific estimate, though.

Q Do you recall that on July 24, 1969, which was six days after the Bangor Punta exc[illegible] offer became effective, that Chris-Craft became effect[illegible] an increased offer for Piper? Do you recall that?

A Yes.

Q How did you arrive at that increase?

A Again to try to top the Bangor offer.

Q Who was consulted on this?

A Our investment bankers and again most of the -- two or three top directors.

Q Were there discussions then of what your package would be worth?

A I'm sure there were.

Q Do you recall any figures?

A Not offhand, I don't.

Q Were you trying to arrive at a particular value?

A Yes, we were up against an announced package of $80 worth of securities. We knew we had to get a package which would be worth more than that in order to get these people to tender.

Q After your exchange offer closed, did you purchase any stock of Piper for cash?

A Yes, we did.

(Pause.)

Q Tell the Judge why you stopped purchasing Piper.

A Because it became obvious that once they had 46 per cent or 45 per cent, we had 42 per cent, that they could beat us in open market purchases like two to one in order to be able to get even. The only way that we were ever going to get control of the company was to have the two blocks that they bought illegally, you know --

Q That's what you claim?

MR. RYAN: I move to strike that.

THE COURT: I will ignore it.

Q I am sorry. It was to have the two blocks which were contested --

A Right, divested or negated in some manner.

Q Did you make any efforts, Mr. Siegel, to extricate yourself from your minority position by selling your shares?

A Yes, we did.

Q Would you tell the Court as specifically as you can when you started the efforts and what you, Herbert Siegel, personally did.

A Some time at the end of August, I think it would

be --

Q I have asked you to give dates as specifically as you can. If you have anything to refresh yourself on dates, you can refer to it. You don't have to guess on dates.

A I have notes.

Q What is it that you are looking at?

A It's notes that I took from my secretary's books when I had appointments and with whom and phone calls to people that are involved in negotiations.

Q Keep your voice up and tell the story chronologically.

A On 8/8/69 I met with Carl Hess, American - European Associates, who had been involved in real estate and business deals with Mr. Salzo representing some foreign banking interests about seeing whether either side could buy out the other and whether we couldn't make some sort of a settlement on this.

On September 11th --

Q Did you tell him that you were prepared to dispose of your shares?

A Yes, I told him that we would either sell or maybe could arrange some sort of financing through them to buy.

(Recess)

MR. PENNOYER: Your Honor, I have indicated to Mr. Liman that I hope to be not more than 20 minutes.

THE COURT: Good.

MR. PENNOYER: And this part relates to uncontested finding 14(c).

CROSS EXAMINATION

BY MR. PENNOYER:

Q Mr. Siegel, as I understand it, you graduated from college in 1950?

A That's right.

Q I would like to briefly outline your affiliations with corporations, starting with the Fort Pitt Brewing Company, which I understand you were board chairman of sometime during the '50s.

A That's correct.

Q And did the Fort Pitt Brewing Company, while you were board chairman, merge into Seeberg Corporation?

MR. LIMAN: Objection, your Honor, as to relevance.

THE COURT: Well, I assume this goes to the issue of credibility and motive and intent, so I will allow it as a preliminary.

A No.

Q What happened with respect to as between Fort Pitt Brewing and Seeberg?

A Fort Pitt Brewing bought the Seeberg Corporation from the Seeberg Corporation and changed the name to Seeberg.

Q And then you subsequently became board chairman of Seeberg Corporation?

A Well, it was the same company.

Q And then did you thereafter sell off the assets of Fort Pitt Brewing?

A Yes.

Q And in the early '60's, did you become disassociated with Seeberg and become board chairman of Centilever Brewing Company?

A That's correct.

Q And did Centilever Brewing Company subsequently merge with the Baldwin Rubber Company and the Montrose Chemical Company?

A That's correct.

Q That was a three-way merger?

A Yes.

Q And did that result from purchases by the Centilever Brewing Company of interests in those two

companies, that is, Baldwin Rubber Company and Montrose Chemical?

A Only in one company, as I recall.

Q I see.And which one was that?

A Baldwin.

Q And how about the Montrose Chemical Company? How did that merger come about?

A As part of the merger there was a -- the Montrose Chemical people -- some of the family sold out. There was a disproportionate redemption of stock, as I recall it.

Q And the successor company became known as the Baldwin Montrose Chemical Company?

A That's correct.

Q And you became board chairman of that?

A Yes.

Q And subsequently did the Baldwin Montrose Chemical Company sell off the assets of the Centilever Brewing Company?

A We sold and financed the employees to buy it.

Q And similarly, as to the Baldwin Rubber Company, did the Baldwin Montrose Chemical Company sell off Baldwin Rubber?

A No. We only sold off the rubber plant. We did not

sell off what was involved in Rubber before.

Q I see. And while you were board chairman of Baldwin Montrose Chemical Company, that company bought a nine per cent stock interest in Paramount, is that correct?

A Yes.

Q And you went on the Paramount board?

A Yes.

Q For a period of time.

A A short period of time.

Q Yes, sir.

And subsequently you left that board and Baldwin Montrose Chemical Company sold its Paramount stock?

A That's correct.

Q And approximately what year was that, that the Paramount stock was sold?

A I believe '66. I may be off on that but I believe that was the year.

Q Thank you.

And then in 1967 Baldwin Montrose Chemical Company bought some stock in Chris-Craft?

A That is correct.

Q That was while you were still chairman of the

board of the Baldwin Montrose Chemical Company, is that right, sir?

A That's why --

Q No. That was while you were still the board chairman?

A Still, yes.

Q And late '67 or early '68 Baldwin Montrose Chemical merged into Chris-Craft?

A Merged -- I believe it was -- the merger was complete in the summer of '68.

Q And you became board chairman of Chris-Craft Industries?

A I was board chairman of Chris-Craft before the merger.

Q You were already. Very well, sir.

Now Mr. Gordon and Mr. Rocklis both came to Chris-Craft with you via the Baldwin Montrose Chemical Company?

A Came to Chris-Craft via -- yes, I --

Q Now you have no experience in aircraft manufacturing.

A That is correct.

Q I believe you testified on direct that at some time in January, just prior to the cash tender offer, you

looked at and studied the 1968 annual report of Piper Aircraft.

A That is correct.

Q And isn't it a fact that you looked only at the financial data in the annual report?

A No.

Q What else did you look at?

A I read the annual report. I read the annual report.

Q Now you testified on June 11, 1969, by deposition, and I am going to read to you page 194, starting with the questions at line 14:

"Q Other than the availability of shares of stock, did you take any look-see at the company, its finances?

"A Yes.

"Q Its reports.

"A I'm sure Mr. Rocklis did. We looked at their annual report, and when we got the latest annual report I looked at it. I didn't read the written part. I looked at the financial part."

Now was that statement correct, Mr. Siegel, when you made it?

A I don't believe it was correct.

Q You believe now that you read the written part?

A Yes, sir.

Q You believe your recollection is better today than it was in June of 1969, when that deposition was taken?

A I certainly do.

Q Now the first order for Piper stock on the open market was December 30th?

A That's correct.

Q That was for 5000 shares?

A No, we bought 5000.

Q You bought 5000 on or about that day?

A On that day.

Q All right.

A But the order was not 5000 shares.

Q Right. And thereafter I think you have already testified you had accumulated about 100,000 shares prior to the time the Tech Fund representative came to your company?

A That is correct.

Q For discussions.

A That's correct.

Q Now is it correct that by January 8th you had already acquired 94,000 shares of Piper stock?

A That's possible, because I don't have the exact

dates.

Q It came in pretty fast at the beginning, didn't it?

A Yes, it did.

Q How did you consult with any expert in the aircraft manufacturing business before February 4th?

A Before February 4th?

Q Yes.

A Only to the extent that on our board of directors is a gentleman by the name of Cliff Goad, who is a retired executive vice president of General Motors. He came out of manufacturing. Mr. Goad was head of the Wildcat program for General Motors during World War II, so he knew something about manufacturing.

Q Now the Wildcat program was a program involving Navy single-engine fighters.

A Yes.

Q And, as I understand it, his experience was in connection with the manufacturing of these Navy fighters back in 1942 to '44?

A That is correct.

Q And since then he had been with General Motors?

A Yes. He was with General Motors at that time.

Q Right, sir.

Now did you consult with Mr. Goad prior to February 4th?

A Yes.

Q About the products of Piper?

A Well, at the board meeting that we had after the annual meeting, we discussed Piper.

Q Piper what?

A Aircraft.

Q Stock?

A Well, we also discussed the financials and the data that we had.

Q Now February 4th was the date your cash tender offer closed. Ibelieve on that date or shortly after you met with a Mr. Mulfield?

A Ed Mulfield, yes.

Q Yes. And you considered him an expert in the aviation business, that is, the aircraft manufacturing business?

A I think Mr. Mulfield is recognized as that, but I think the purpose for the Mulfield meeting was because Mr. Mulfield was close to Mr. Shields and was a friend of -- a mutual friend of mine, and he thought that maybe he could intercede with the Piper family.

Q So the discussions with Mr. Mulfield did not

involve Piper products or aircraft manufacturing as such?

A Well, I would say that in a broad sense you are correct.

Q And then you spoke with Mr. Lear about that time, didn't you?

A I believe Mr. Lear was later. We were talking about his steam engine for use in boats, and I had dinner with Mr. Lear, and we did mention, obviously, Piper and some of the products.

Q This is some time after February 4th?

A Yes.

Q Now in connection with the fixing of the number of shares which Chris-Craft tendered, that is, the 300,000, I believe you testified on direct that there were discussions between you and several members of the board?

A Yes.

Q Was that, among others, Mr. Sherill?

A Yes. We spoke to Mr. Sherill.

Q And Mr. Gordon?

A Yes.

Q Mr. Rochlis?

A Yes.

Q Who else?

A Mr. Erpf. I don't know whether we -- I think I did mention the number to Mr. Goad and to the rest of the directors in so far as what we were recommending what we would do.

Q Do you recall now that there was a discussion at one point about the possibility of offering $60 for 200,000 shares?

A I don't recall offhand, but it is very possible. The --

Q Was Mr. Erpf present at that meeting at which you discussed the number of shares for which Chris-Craft should tender?

A Well, there were so many discussions on the phone. I believe that when we made the tender, the discussions -- I believe that Mr. Erpf was in London. I may be wrong. I know some time during that period I had to call him in London.

Q In any event, you did talk to Mr. Erpf on this subject of fixing the number of shares and the price?

A Yes.

Q Prior to the cash tender offer?

A Well, at the -- yes. We would have to before the thing is printed up.

Q Right, sir.

Now I am going to read pu a question and answer and see if that refreshes your recollection as to whether one of your directors suggested offering 60 to bring in 200.

MR .PENNOYER: Page 232, Mr. Liman.

Q (Reading)

"Q What did you say to Mr. Erpf and what did he say to you?

"A I don't know whether we had in my talking with Len, Jim and myself and other management directors, whether we had actually set $65. We were toying with the idea of $60. We were toying with the idea, as I remember, of maybe 200,000 shares minimum, and the idea evolved because we all agreed if we went to $65 we thought that we would get in 300,000 shares and that the Stret would tender."

Does that refresh your recollection?

A Only to the extent that you have read it, that is right, yes.

Q So you don't question that those discussions were had?

A I missed the question.

Q You don't question that those discussions of which I have just read were had?

A No, I do not.

Q Now you all agreed, didn't you, that you should pick a number that you thought you could get at the price offered?

A Yes. That was one of the considerations.

Q And in fact you picked the right number, didn't you?

A Yes.

Q Within one per cent?

A Yes.

Q Now did you regard the investments in Piper made in the open market and through the cash tender offer, up through the cash tender offer, as good investments for Chris-Craft?

A Yes.

Q And did you believe at the time that you could, even after the cash tender offer, go backwards, that is, sell out, if it became advisable or necessary?

THE WITNESS: What was the question?

(Question read.)

A This was after the cash tender offer.

Q Yes. That is, immediately after the cash tender offer, did you believe that you were in a position to either move forward or get out, sell out?

A Yes.

Q Without loss to Chris-Craft?

A Well, that's a guess, and I would say that I personally felt that way, yes.

THE COURT: You personally -- what?

THE WITNESS: I would have felt that way.

THE COURT: In other words, you thought that you had a complete market take-out in the offing?

THE WITNESS: I felt that -- something else is that I thought that the fact that the Grumman announcement came in the midst of that -- I felt that that was significant.

THE COURT: The Grumman announcement came later, but when you went into this enterprise and first invested a little more than a quarter of a million dollars and later on increased your investment to about six million dollars within a week, you felt reasonably certain that you would have a full market take-out at cost?

THE WITNESS: Or with relatively little risk.

THE COURT: Or possibly with some profit?

THE WITNESS: Yes.

BY MR. PENNOYER:

Q Now between the end of the cash tender offer on March 18th, did you buy on behalf of Chris-Craft any stock

on the open market, Piper stock?

A Between the -- February 4th --

Q February 4th and March 18th.

A I would have to check the records, but I believe, if the 18th is after we met with Mr. Evans of Grumman, I believe we started to buy after that.

Q And not before?

A I don't remember, or --

Q Now going back for a minute to the Grumman announcement, on the 29th of January did you believe that that announcement had the effect of driving the price of Piper down, that is, the market price of Piper down?

A You want my humble opinion about it?

Q Yes.

A I would say that to the extent that the sophisticated arbitrageurs or anybody who would have played an arbitrage position knew that with that deal supposedly signed, that we had a way of getting out of the tender offer.

So to the extent that normally in a tender offer you might have gotten arbitrageurs to work, you didn't because of the out clause.

Q But you may have misunderstood my question.

I think you testified on direct that shortly after

the 29th or some time late in the cash tender offer period, you went to Loeb Rhoades to talk about your concern that you might get the whole company dumped in your lap?

A Yes. I went to talk about the financing in case that happened.

Q And didn't that concern arise because of the market action of the Piper stock on or about the 29th of January?

A I would almost have to answer that by saying at that particular time in the stock market most tender offers -- you never knew where you were going to be, or at least everybody tendered the last minute.

As a matter of fact, that is why we had Mr. Gordon down, because they were lined up tendering the last minute. We didn't know what the count was going to be.

THE COURT: Did the Grumman offer have any effect on the market, as far as you were aware?

THE WITNESS: Did the Grumman offer -- well, to the extent that we didn't have any arbitrage working for the tender offer, yes.

THE COURT: What was the effect?

THE WITNESS: Well, because the arbitrageurs wouldn't touch it.

THE COURT: What was the effect on the market price, if any?

THE WITNESS: Well, then it would sell lower. I think it did sell lower.

THE COURT: That is a question that you were asked before, whether you believed that the Grumman offer had the effect of depressing the price.

MR. LIMAN: Objection, your Honor. I don't think that it was put quite that way.

BY MR. PENNOYER:

Q Now, Mr. Siegel --

THE COURT: You don't have to adopt my question, Mr. Pennoyer, but that is what I understood you were asking.

MR. PENNOYER: That is what I was trying to do, your Honor.

THE COURT: Have I misunderstood your question?

MR. PENNOYER: No, you didn't, sir.

THE COURT: Then you had better put it so that the objection is solved.

Q I will read to you some questions and answers on page 263 of the testimony you gave by deposition on June 11, 1969:

"Q Do you agree that the machinations of the Pipers

was having an adverse effect on the stock? 1561 A

"A I think the machinations of the Pipers had an adverse effect on the stock, on the company.

"Q You mean by that that the machinations of the Pipers was causing the market price of the stock to go down?

"A I think that was part of it. I didn't like what they were doing."

Now did you give those answers to those questions, Mr. Siegel?

A If it is in the record, I am sure I did.

Q And you believed that they were true when you gave them?

A Yes.

Q And true today?

A Well, there are some vague answers there. You know, I would almost have to read it again in front of me before I could answer that.

Q Would you like to read it now, sir?

A Yes, if you don't mind.

Q I will show you the questions and answers which I read to you, and they start on --

MR. LIMAN: Will you him where you want him to read?

A Yes, that was my testimony.

Q All right. You don't quarrel with it now as being correct?

A That the market price went down?

Q Yes.

A I guess that's true. Yes, I think that's true.

Q Because of the activities of the Vipers?

THE COURT: The question you are being asked is:

When you were asked those questions and you gave those answers, you said that they were true when given, and the additional question is, now, do you stand by those answers today?

THE WITNESS: Yes, I do.

MR. PENNOYER: Thank you. I have no further questions.

THE COURT: Any further questions?

MR. RYAN: I have just a few.

THE COURT: Go ahead.

(Discussion off the record.)

CROSS EXAMINATION 1563A

BY MR. RYAN:

Q Mr. Siegel, you testified on your direct examination that you had heard that Mr. Cornfeld, I assume of Investors Overseas Serviceswanted to sell his Piper shares but that you did not speak to Mr. Cornfeld.

A That is correct.

Q When did you first learn that Mr. Cornfeld or one of his funds owned Piper shares?

A Mr. Cornfeld told me that in Mexico.

Q When?

A In February.

Q February of what year?

A I am sorry. Wait a minute. Yes, that's about right. February of '69.

Q And was this conversation with Mr. Cornfeld prior to your meeting with the SEC in Washington in April, 1969?

A Yes, it was.

Q Did you ever offer to buy Mr. Cornfeld's or his fund's Piper shares in this February conversation with Mr. Cornfeld when you learned that he owned them?

A No, we did not.

Q When did you hear or learn that Mr. Cornfeld was

interested in selling his Piper shares?

A Sometime in early May.

Q And how did you learn about it?

A I believe Mr. McCreary was working with Mr. Cornfeld at that time, and he was with him from time to time, and he told me that Mr. Cornfeld wanted to sell their stock in Piper.

Q Do you recall anything else about this conversation with Mr. McCreary?

A Do I recall anything --

Q Anything further.

A Mr. McCreary was in my office back and forth on houseboat programs during that period.

Q No. I am specifically referring to conversations with Mr. McCreary in early May, 1969, I assume, in which he advised that Mr. Cornfeld had told him that Mr. Cornfeld wishes to sell his Piper shares.

Now do you recall anything further on that subject Mr. McCreary related to you?

A Yes. I told Mr. McCreary that we were not allowed to buy any stock.

Q Anything further?

A Later on, when it was brought up again one night,

I said -- as a matter of fact, I had meetings with our lawyers about it and with Mr. Erpf and Mr. Gordon, and I just wanted to get something straight, that this was after Bangor Punta went into the situation and announced on the 8th. I think it was that weekend we had a meeting at my apartment.

Q Was this a conversation with Mr. McCreary present?

A No, but I believe that Mr. McCreary had called me or been in my office during that period.

Q Now, I was directing your attention, Mr. Siegel, to the conversation you related you had with Mr. McCreary in early May, 1969, in which he advised you that Mr. Cornfeld was interested in selling his Piper shares. You testified that you recalled telling Mr. McCreary that you couldn't purchase his Piper shares.

A That's correct.

Q Do you recall anything else in that specific conversation concerning the subject of the Piper shares?

A Not offhand, I don't.

Q Did you ever speak to Mr. McCrary again concerning the subject of Mr. Cornfeld's Piper shares?

A Yes.

Q When?

A In that whole period of time. I am talking about from the beginning of May through -- April, probably. During that whole period of time through the 16th.

Q May 16th?

A I believe that was the -- yes, I think that was the date. I would have to recollect when it was announced on the tape.

Q It was announced a purchase by Bangor Punta of Mr. Cornfeld that the Fund of Fund shares was announced on May 16?

A In between that period of time I had been told that Mr. Cornfeld wanted me to call him and I said I told Mr. McCrary that I am not going to call Mr. Cornfeld and I am not going to buy any stock, I am not going to get myself in trouble with theSecurities and Exchange Commission. Nothing was worth that aggravation.

Q That is quite clear in your mind?

A Yes, it is.

Q Do you recall, Mr. Siegel, that your deposition was taken on June 9, 1969, by Mr. Pennoyer in this action?

A Yes.

Q Do you recall having your deposition taken by Mr. Pennoyer in this action?

A Yes, I do.

Q I direct Mr. Liman to Page 103, Line 8, to 104, Line 21. Do you recall, Mr. Siegel, being asked these questions and giving these answers:

"Q To your knowledge in Chris-Craft spoken to anybody in Fund of Funds during this year regarding Piper stock?"

"MR. LIMAN: You keep using the term Chris-Craft. You mean any employee --

"MR. PENNOYER: Any servants, employees, or agents, officers or managers or directors.

"MR. LIMAN: That is a pretty broad term.

"A I would consider McCrary as a meeting, Tex McCrary.

"MR. LIMAN: He is a consultant to Chris-Craft.

"Q In what capacity is Tex McCrary associated with Chris-Craft? Does Mr. McCrary hold a position with Chris-Craft?

"A No.

"Q He is not an employee?

"A No, he receives a retainer from Chris-Craft. I think it started in January for his work in trying to put together something on Aquatels and Aquavillas from Mexico,

which is something we have been working on for six or seven months or a year before that.

"Q To your knowledge, has McCrary spoken to anybody in Fund of Funds regarding Piper or Piper stock?

"A To my knowledge, he has spoken to Cornfeld, but whether it was about Piper stock, I don't know. He talked to Cornfeld about houseboats being used as part of Aquatels, and as an expansion for the hotel industry.

"Q Do I understand you to say that you don't know whether McCrary talked about Piper?

"MR. LIMAN: How would he know, he was not present.

"A That is what I want to say.

"Q Had you been informed by anybody that McCrary talked to Cornfeld about Piper or Piper stock?

"A Yes, I believe that -- we have since learned that he did talk to Bernie about that.

"Q What did you learn about that conversation?

"A Nothing of any value, other than Cornfeld, or one of his funds, had a position in Piper stock."

Do you recall being asked those questions and giving those answers?

A Yes, I do.

Q Were those true when you gave them?

A To the best of my recollection at that time, yes.

Q Are they true today?

A I have refreshed my recollection quite a bit.

Q Would you read the last part?

(Record read.)

Q I direct your attention, Page 107, Line 21.

THE COURT: In what way do you say it is not true today?

THE WITNESS: I think the answer to that, sir, as I understand it, was that I never heard that Mr. Cornfeld had talked to Mr. McCrary about Piper stock.

THE COURT: On the very same page, Page 104, you were asked the question who told you about this conversation or who gave you this information.

"A I believe Tex did.

"Q Directly?

"A Yes.

"Q When did you talk to Tex about this?

"A During this period of time," and so forth.

Does that mean that that was all made up testimony at that time?

THE WITNESS: I don't -- maybe I misunderstood it. I thought --

THE COURT: Did you have a conversation with Mr. McCrary directly in which he told you about Bernie Cornfeld

wanting to sell his stock?

THE WITNESS: Yes. He had told me about Mr. Cornfeld wanting to sell his stock.

THE COURT: Then in what respect is the testimony that you gave at your deposition untrue? You said you refreshed your recollection and now it is untrue for some reason. I am trying to get at what you are trying to tell me.

THE WITNESS: I misunderstood what I read then. I thought I said that I hadn't spoken to Mr. McCrary. I didn't read the last part of it.

MR. LIMAN: Judge Pollock, I think that Mr. Ryan stopped in his reading of that testimony.

THE COURT: I know that he stopped.

MR. LIMAN: Short of where you were reading.

THE COURT: I know that he stopped. The point is that Mr. Ryan asked the witness a question very clearly, "Was the testimony correct when you gave it," and the witness said he has refreshed his recollection, intimating that there is something wrong about it now.

MR. LIMAN: Mr. Ryan read that part of the testimony that said that he did not talk about Piper and then your Honor read on where in the very same session and on the next pages he talks about that right up through 107.

I think Mr. Ryan is about to read 107 where it corrects that impression.

Q Now I would like to read from the same deposition, Mr. Siegel, on Page 107, Line 21, and to the bottom of 108.

"Q What did Tex tell you in New York about Cornfeld's position in Piper stock?

"MR. LIMAN: Did he say how many shares he had? What did he tell you?

"A He told me he had this big block of stock in Piper.

"Q What did he say?

"A Then I said fine.

"Q Did you ask him how many shares?

"A I might have. But I don't think Tex ever got an accurate description of how many shares he had.

"Q Did you ask h' to find out?

"A I might have asked him, was it 40,000 or 100,000.

"Q You might have asked him is it 40 or 100,000?

"A I might have asked him is it 40 or is it 100,000 is very possible.

"Q Did you ask Tex to say anything to Cornfeld?

"A No, except that later on in the conversation when I was under the impression that Mr. Cornfeld was upset

for us not going to see him or something else was the way I got the information.

"I was told by the SEc that we could not talk to the Funds or purchase any stock and neither could Piper and neither could any third party."

Do you recall being asked those questions and giving those answers?

A I do, yes.

Q Were those answers true when you gave them?

A Yes.

Q They are true today?

A Yes.

MR. RYAN: I have no further questions.

5A PM

MR. ARNING: I really have no questions. I am afraid the record may be a little unsatisfactory in the decline of the price relating to Grumman. I would like to read a very brief portion of the deposition of Mr. Siegel, your Honor. He did look at some. I'm not sure how much or how much was adopted.

MR. LIMAN: Is this to be put to Mr. Siegel as questions or do you want to read in testimony?

MR. ARNING: I want to read it in as an admission.

THE COURT: Ask the witness whether he was asked those questions and did he give those answers, and then you get no flack.

MR. ARNING: Very well.

CROSS EXAMINATION

BY MR. ARNING:

Q I am referring to the deposition of June 11, I believe it is, 1969, page 262, line 18:

"Q Do you agree with the following statement" -- then there is an objection as to form by Mr. Liman. Then the question continues:

"Q We were concerned that the price of Piper was falling or had fallen and the machinations of the Pipers was having an adverse effect on the stock."

Then Mr. Liman interjects.

The answer then is:

"A Obviously, we were. The lower the price, the more successful their tender offer would have been."

That's the end of that reading.

Then turning over to the next page, 264, question at line 12:

"Q Did you have any other purpose in mind?"

The purpose refers to a meeting that is being discussed.

"A Well, I think we brought up at that meeting that it's remotely possible that we could be thrown a great d-al more than 300,000 shares because the stock was going down.

"And usually in a tender offer, the stock stays within a certain range of the tender, and when it doesn't, the indication is that it is going to be very successful."

That's the end of that reading.

Do you recall being asked those questions and giving those answers?

A I don't recall that specific thing, but if it's on the record, I'm sure it's correct.

Q If I were to ask you those same questions today, would you give the same answers?

A I might qualify it. I might qualify it.

Q What are the qualifications, Mr. Siegel?

THE COURT: He wants to know how you would qualify it.

A You are asking me about if a -- fact one, if a tender is out for $65 a share and the tender is sound, in other words, there's no out clause, then if a stock still sells at, let's say, 58, 59 or somewheres in that range, say 60 even, my opinion is that that tender offer will be oversubscribed.

MR. ARNING: May I have the answer read back, please.

(Answer read.)

A (Continuing) Unless it's for 100 per cent of the company. I should qualify that.

MR. ARNING: No further questions, your Honor.

REDIRECT EXAMINATION

BY MR. LIMAN:

Q If there's an out clause?

A If there's an out clause?

Q You qualified it by adding if there's no out clause.

A If there's an out clause, then obviously the arbitrageurs aren't going to touch it. You are counting on whether the small stockholders are going to actually go through the tender offer or not.

Q Do you know of any way as you sit here today, a man

of some experience in the stock market, of telling how many shares you would have gotten had there not been the Grumman announcement?

MR. PENNOYER: Objection.

THE COURT: He may answer whether he knows of any way as a result of his experience.

A No.

MR. LIMAN: No further questions.

RECROSS EXAMINATION

BY MR. LENING:

Q This isn't something you just learned, the fact that there was an out clause in your tender offer, was there?

A No.

Q You knew that when you were being examined before?

A Yes, I probably did know it. I mean, I didn't feel going into an examinstion that I had to have every statistic or fact or have refreshed my memory, you know, to that extent.

Q And you also knew everything that you know today at the time that you felt sufficient fear that you were going to get a lot of stock, so you hastened to arrange for a financing?

A Well, my personal guess on whether we would get 51 per cent might have been different than Mr. Gordon's, but

we had to be prepared in case that happened. In other words, you know, it is possible that I -- if you would have said to me would you bet or would you be willing to back your reputation that you won't get 51 per cent, that you will get 51 per cent, I would have said I really don't have a feel for that, but there is that possibility.

Q Something changed between the time you started your cash tender offer on the 23rd and the time that Mr. Gordon went to see Loeb Rhoades and Burnham & Company on the 30th, I believe is the testimony.

What changed in that interim other than the announcement of the Grumman transaction and the decline in the price of Piper?

A The fact that the Grumman announcement allowed us a way out, that we were sitting with a way out, a decision possibility of getting out of the deal.

Q In other words, your answer is nothing changed except the Grumman announcement? I asked you what else changed that prompted you to go to see your bankers on the 30th when you didn't go to see them on the 23rd?

A Yes, the possibility that we may get more stock than we thought.

Q And that was of sufficient concern so that at least you didn't stop Mr. Gordon, you said go ahead and arrange

for the financing, we may get a lot more stock?

A Yes. I may not have said it that way. It might have been Mr. Gordon who said to me, we are liable to be thrown, the whole company. We better have our financing in line.

Q Haven't you yourself expressed the same concern in the course of these depositions?

A Yes. I mean, that was a possibility.

Q Are you now telling me that that was not a proper concern, you should not have been concerned?

A No, I think it was a very proper concern.

MR. ARNING: No further questions.

THE COURT: Anything else?

MR. RYAN: No further questions.

EXAMINATION BY

THE COURT:

Q I would like to inquire, Mr. Siegel, as to the scope of your knowledge and information before your Chris-Craft committed for about $6,000,000 on January 8th in PAC stock. What inquiries had you made as to the distribution of PAC stock among the public?

A Well, I believe that Mr. Rochlis -- I spoke to Mr. Rochlis on the 2nd. It was a holiday in between.

I told him what did he think about it. He said

he didn't have the numbers. I read him the broad facts that we had. I believe he came back on the 6th and I told him on the phone, when he comes back, he should take a good look at the documents.

I believe on the third or the first business day that I asked Len to get whatever filings there were. The answer to that, whatever was public documentation was in our hands.

Q What information did you have as to where the large blocks of stock and what the distribution of the stock was before you committed for $6,000,000 worth of --

A We had the prior year -- I think we had their proxy as well in the prior year. I may be wrong.

Q So that you knew, did you, where the large blocks of stock were located?

A No, but in the short Standard & Poor, your Honor, there is a column that says institutional holdings and the amount of stock.

Q Did you ascertain who those institutions were?

A Not that early.

Q Did you ascertain anything about the ownership of the members of the board of directors?

A Yes, that we did.

Q Did you ascertain anything about the ownership

of the Piper family?

A Yes, we had that.

Q And did you know where the shares were located in the street and what brokers probably had access to the proxies?

A Proxies?

Q Yes, for the forthcoming meeting on February ~~the 3rd.~~ 4th.

A No, that we didn't.

Q Did you make no inquiry as to where the bulk of the shares were located that would probably be voting on February 4th?

A No. I knew that there was a question whether we would get the proxies on the stock that we were buying. I mean, we weren't really that significantly interested in worrying about proxies during the early part of January.

Q You mean that you committed for $6,000,000 without being concerned as to what was going to happen on February 4th?

A Yes, sir. I didn't mean it quite that broad a generality, but if we had 100,000 shares of the stock, we wouldn't be entitled to a seat on the board.

Q Why not?

A Because of this cumulative voting.

Q How many directors were being voted for?

A Eight.

Q Wouldn't eight times one hundred thousand give you at least one seat on the board?

A I don't believe so. I don't know how that exact formula works. You have to have one-eighth of the total amount of stock, 12 per cent, to get one seat.

Q What was one-eighth of the total amount of stock?

A It was one million six. It would be about 160, 180-some-odd thousand shares, my estimate.

Q Did you know who the bankers were of the company at the time you started your purchasing program?

A I don't believe so.

Q Certainly by the time your company bought the Technology shares from Technology Fund you had more than enough for representation on the board, didn't you?

A Yes, but we weren't -- I'm under the impression that we could not vote more than the Technology Fund stock because the other proxies were gone.

Q Had you made any analysis of the cash flow of Piper before you started this buying program?

A Yes, just based on the numbers that --

Q What was the cash flow situation of Chris-Craft prior to the commencement of this purchasing program?

A I think our pre-tax, we probably had eight or

nine million dollars.

MR. ARNING: Could we have that read, your Honor?

THE WITNESS: I believe it was eight or nine million dollars pre-tax.

Q What did you estimate that you could increase that by if you got control of Piper?

A What could we increase --

Q The cash flow, yes, on the merger basis.

MR. LIMAN: He answered in terms of earnings. Is your Honor asking him in terms of cash flow?

THE COURT: I am talking about cash flow.

Q Didn't you know anything of the cash flow of Piper?

A Only to the extent that I saw the earnings and the dividends and the appreciation.

Q What figure did that indicate to you?

A I believe that they earned $2.37 and I believe that they had spent more than their appreciation. I'm trying to recollect his. They paid out -- I think the dividend was $1.40 a year.

Q What did that indicate was the cash flow that could be the prize of going after control?

A Well, maybe I am misunderstanding your Honor-

Q I am assuming that you are an expert. Finance and cash flow is one of the targets of a takeover; is that

right?

A It can be, but in a situation like this we would believe that the growth in a business was very sound.

Q What did you know about the growth of the business after reading one report and an article in Fortune?

A It was Forbes.

Q Forbes.

A I knew something about the light aircraft business from years ago when I had my own planes.

Q You mean you knew how to run a plane?

A I have sold them. I had planes.

Q Isn't it a fair statement that your knowledge of aircraft manufacturing was very amateurish?

A Of the manufacturing, yes.

Q This was an aircraft manufacturer?

A That's right.

Q Here you were going into a program which started out with a $6,000,000 commitment and in very short order got to be a twelve or fifteen million dollar commitment?

A That's correct.

Q I want to know what it was that motivated you to step in with that kind of money knowing that there was an annual meeting com ing up on February the 4th.

A Can I spend a great deal of your time answering

this?

Q You can take all the time you want. I am trying to understand your case.

A We believed, A, the recreation and leisure time business if put together intelligently, that even though each company independently may have a cycle and be cyclical by the very nature of it, that the cycle, strangely enough, historically did not always run at the same time. In other words, it was very possible to have a big boat year and bad aircraft year or it was possible to do very well in the sporting goods business and still do lousy in the boat business. If you trace that history, the philosophy was that if you put the leading brand names together intelligently and if you could restaff the managements to the extent that you accentuated the companies on a marketing direction, you would have a very good chance of having two things.

One, that you would have a very glamorous type of security.

No. 2, that you would really and truly have hedged for the future, the way the economy was going.

My interest in Piper and what I knew about Piper was the following: A, there were three public companies in the business, Beachcraft, Cessna and Piper.

Beachcraft was the higher-priced planes. Both

Beachcraft and Cessna did a great deal of government business, so they got out of the R & D work for themselves which helped them in their product lines.

Cessna some time in the fifties brought in some outside management consulting firm and directed the marketing program to bring Cessna going both ways, right down to Piper's level and all the way up to Beech's level, so that they were going both ways at the same time. Piper was unique in this sense, that in the small airplanes, single-engine airplanes, all the way up to the low-priced twins, they were the dominant factor in that market, that even though there may have been bigger numbers in unit sales in specific years, they had, despite a relatively small organization and despite the fact that it was a family-run company, they had a very strong potential because they could theoretically move up a lot easier than Beechraft, let's assume, could move down into their markets.

So that if we could take that company and staff--they were going in the right direction, frankly, when you read the reports. They were a little late. They were getting there.

They had come out with the Navajo, the Twin Navajo, which was the top of their line. They were planning to bring out a pressurized version.

These were all again moving up against Beechcraft.

The Comanche had made tremendous inroads in the small twin-engine airplane business because it was low-priced, and the combination of -- of their present market position and the direction they were going in, plus the fact that they were now going to go into the commuter airplane business, which was -- they were going into it with a low-priced piece of equipment, that seemed to me to indicate to me that that company's sales and earnings could very well increase substantially.

My opinion -- it's easier to build into the higher price bracket than it is to try to come down.

In the aircraft business generally -- I don't know whether I should bore you with this, but, if you want to, I will continue.

Q Are you telling me that you acquired all of

this sophisticated knowledge over the New Year's weekend --

A No.

Q -- by reading Forbes, Standard & Poor's blurb on Piper and something else?

A No, sir. I tried to -- I thought I was asked the question whether I considered myself a manufacturer, an aircraft manufacturing expert. I do not. I do not consider myself an aircraft manufacturing expert. I do know something about the business that goes back many years.

I do think that many years ago the founder -- actually he bought the company, I think, from Mr. Taylor for $600.

Mr. Piper, Sr. had an idea -- I believe it was after World War II -- that the country should build the small aircraft.

Q Much of this is knowledge acquired after you put the six million dollars in?

A I would say -- I would say that probably a third of maybe what I am saying to you. I would say two thirds --

Q In all events, I am trying to ascertain what other than a financial opportunity or a seeming financial

opportunity led you to step into the Piper aircraft matter within a month of an annual meeting.

A It was a series of events that happened, your Honor, that I testified to earlier. The strange thing was that unbeknownst to us, as we started to get blocks offered, we thoughtwe were cleaning up because we looked at the history which I had studied of the trading in that stock.

It was surprising to see that much stock come in in such a short period of time.

It was not just surprising, it was unbelievable. I always thought that the last block we bought was the end of it, and the next day there would be two or three hundred shares traded.

Q How did you explain it to yourself?

A I learned that what we were buying was institutional holdings and I later learned through a woman brokerwho supposedly is the expert, Muriel Sebert was very angry when we made the tender offer.

She said to me, "Why didn't you come to me? Why didn't you talk to me?"

I said, "If we weren't buying that stock, we would never have made the tender offer."

We really felt that we would buy a block of

stock and we would do this over a period of time and study more about it and take our time.

I must say that this is my fault. I am the chief executive officer. I made the recommendations.

In hindsight we would have been very much better off if we had gone on vacation after Christmas. It was a series of events, your Honor, that caused the tender offer.

THE COURT: Mr. Liman.

* * *

THE COURT: Isn't the real reason you made the investment here that you thought you could go into a situation and before February 4th be out of it?

THE WITNESS: No, sir.

Q Mr. Siegel, you had Warner Bros., is that correct?

A Yes, sir.

Q And you owned MGM?

A During -- yes.

Q And you owned Harley-Davidson.

A Yes, we did.

Q Inall of these cases had you given some consideration to the possibility of a merger or a combination of your company with those companies?

MR. PENNOYER: Objection.

THE COURT: Overruled.

A Yes, we did.

Q And did you buy, during this period, stocks outside of the leisure-time field?

A No.

Q Were you in the business of stock market speculation?

A Absolutely not.

Q And when you bought --

THE COURT: In the light of that last answer, is there any situation in the last several years that you have stepped into that you have stayed with for any period of time and haven't sold out?

THE WITNESS: Yes, sir. I would say that Chris-Craft is one.

THE COURT: Are there any others?

THE WITNESS: We don't do that many.

Q When you say you don't do that, you either get into the company or out?

A Yes.

Q And in the case of Piper, when you bought your first 5000 shares, did you know how many shares you would get at the next bid?

MR. PENNOYER: Objection.

THE COURT: Overruled.

A No.

Q Were you bidding above market at this time?

A No. What I would do is place a bid. I would ask the floor broker what is the bid and the asked.

THE COURT: Wouldn't you ask him the size of the market on either side of the bid?

THE WITNESS: Right.

THE COURT: Didn't you try to find out what was on the book?

THE WITNESS: Right.

THE COURT: And weren't you bidding in connection with what you knew was on the book? Isn't that the way you go about buying important blocks of stock?

THE WITNESS: Later, your Honor, but in the beginning the only thing, and mostly in my experience they would not tell you the book all the way up.

In other words, they won't say, "If you go up to 54 you will get 3000; 55 you will get 2000."

THE COURT: But to a sophisticated purchaser, the things that they did tell you are sufficiently coherent so that you can feel the pulse, the size of the market on the books, isn't that so?

THE WITNESS: Yes, if there is a block offered you could see it. Then you decide whether you want to buy it.

THE COURT: Certainly you knew at the times you were buying it what would clean up the book at particular prices?

Didn't you know that by communication through your broker to the floor?

THE WITNESS: Only to the extent that the broker would tell me that they are showing so many shares.

THE COURT: Well, you asked each time?

THE WITNESS: Certainly. I don't know whether it was each time, your Honor, because what I would have done is --

THE COURT: I assume that you weren't sitting on the telephone all the time but I am talking about in the objective contemplation that you weren't purchasing blindly.

THE WITNESS: That's correct.

BY MR. LIMAN:

Q Did you know the names of the institutions which were selling to you?

A No.

Q Did you know that there were institutions ready to sell?

A Ready to sell?

Q Yes.

A No.

Q Had you watched the trading in part before you made your purchase, the first purchase?

A Yes. I might have looked -- I am sure I looked

at the book, the short book, and saw the volume for the prior month or two months, whatever it is.

Q And how would you characterize that trading?

A I believe it was like just guessing at this, but I would believe that it was something like 30,000 shares a month or something like that a month.

Q And in the light of your experience in the stock market, would you say that with that volume this would be a stock that you would fit, to get in and out of quickly?

A No.

MR. LIMAN: I have no further questions, your Honor.

MR. RYAN: Just a few questions.

RECROSS EXAMINATION

BY MR. RYAN:

Q Mr. Siegel, you know Roger Spencer?

A Yes, I do.

Q He is a member of the firm of Mitchell Hutchins, right?

A Yes.

Q Did you request Mitchell Hutchins, in late December, 1968, to ascertain whether there were any blocks of Piper shares around?

A I don't remember if it was late '68 or early '69.

Q But do you recall ever asking Mitchell Hutchins to make such a search?

A I don't, offhand, and I don't remembersaying to them, "Go out and search out blocks of Piper Aircraft."

Q You have no recollection of that?

A No.

Q You have no recollection of speaking to Mr. Burns of Mitchell Hutchins?

A Yes. I think --

Q Did you ask Mr. Burns to ascertain whether there were any large blocks of stock around?

A That was very possible, but I talked with Mr. Burns, I believe, for the first time on December 30th.

Q Well, do you recall asking him on December 30th?

A Yes, to -- I thought that would be clear, that if there are any blocks; to show them to us.

Q Now, these purchases that you made in early January, 1969:

On January 3rd, you purchased 36,100 shares of Piper stock on the New York Stock Exchange. Was that in a single transaction or was that a series of transactions?

A I would have to check the ~~conversations.~~ confirmations. I

really don't know.

Q Wasn't that a cross with the mutual fund? You know that, don't you, Mr. Siegel?

A No, I don't. You are asking me if I knew who the seller was. I don't -- you say a cross from the mutual fund, means you know who is the principal on the other side.

Q You bought it from one person, didn't you?

A I bought it through a brokerage firm, yes. I don't know whether that was 36,000 in one block. I would have to check the confirmations.

Q On January 6th you purchased 22,000 shares of Piper stock on the New York Stock Exchange.

Was that through one broker or was that a series of brokers?

A I don't know unless I look at the confirmations. I can't testify to that.

Q You have no recollection as to how that stock came in?

A I was dealing with one brokerage firm.

Q Mitchell Hutchins?

A Right.

Now I don't remember whether they say there was a block of 20,000 shares you buy at X dollars, and I said,

THE COURT: Go ahead.

Q You may answer the question. Will you read that portion?

A Let me see. It -- referring to matters spelled out in the prospectus, it further stated that Bangor Punta would make a further exchange offer to shareholders, securities and/or cash with a value of $80 a share.

THE COURT: What was that language? With what?

THE WITNESS: With a value of $80 a share.

THE COURT: With a value of --

THE WITNESS: Yes.

A (Continuing) "Purely as a protective provision, if when you get 15 per cent the securities you gave us didn't at the time measure up to $80 you gave them, you will make it up. The proposed package to be offered to shareholders is more attractive than the package the Piper family contracted for. It is not a sweetheart deal. It is quite the opposite. At the time the Piper package was worth less than $80, even less now. It would not go over $80."

Now, the second page of Exhibit 41 for identification --

THE COURT: Just let me see that, a minute.

Where were you reading from? Just put your finger

on it.

THE WITNESS: Starting with theword "Further," which is misspelled there.

Q I refer you to page 2 of that exhibit for identification.

A Yes.

Q Are those also notes taken in your conversation with Mr. Deming?

A Yes; they are.

Q Would you read what they say, please?

MR. PENNOYER: Objection.

THE COURT: Overruled.

A They are answers to questions, and I cannot reconstruct the questions. The first answer is: "Assuming they are taking current market values. This has been no secret since May 29. Bangor registration ~~made~~ May 29, and there is no hidden deal. There never has been."

Q Now, was it your regular practice to make notes of this kind, Mr. Ehrich?

A Yes.

Q And were these notes made in accordance with your regular practice?

A Yes.

Q Were they made contemporaneously with your conver-

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A Yes.

Q And you were in what city?

A Pittsburgh.

Q Mr. Deming was in --

A New York.

Q And you initiated the telephone call?

A Yes. I called him.

Q And what was the purpose of your telephone call?

MR. ACKELL: Objection, your Honor.

THE COURT: Overruled.

Q What was it that caused you to call Mr. Deming?

A I believe it was to get comment on a statement made by -- I just don't know. It was to get a comment on a statement that some -- I think Chris-Craft had made.

Q You say a statement that Chris-Craft had made?

A I would have to check my notes before and after to be sure on it.

Q Well, did you have any conversations with representatives of Chris-Craft before you called Mr. Deming?

A No.

MR. ACKELL: Objection, your Honor, as beyond the scope of the voir dire.

THE COURT: I am going to allow a fairly broad examination, even if it trenches on cross-examination, so

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that we get it all at once.

THE WITNESS: Would you repeat the question?

Q Did you have any conversations with any representatives of Chris-Craft before you called Mr. Deming?

A No; I did not.

Q And I think you mentioned something said by Chris-Craft that prompted your call to Mr. Piper in the first instance and then Mr. Deming; is that correct?

A Yes.

Q What was it that prompted your call that was said by Chris-Craft?

A I believe it was in the first part of that first document from the Dow Jones News Service.

Q Plaintiff's Exhibit 40?

A Yes.

MR. ACKELL: 40.

MR. PENNOYER: May I approach the witness, your Honor?

THE COURT: Yes.

Q I show you in Exhibit 40 the following: "New York D.J.,James J. Rochlis and C. Leonard Gordon, authors of the shareholder letter."

Is that the Chris-Craft statement you have reference to?

A Yes.

Q And that is a letter to the shareholders of Piper from Mr. Gordon and Mr. Rochlis?

A As it was reported there. I have never seen the letter. I was basing my questions on that.

Q You say you had not seen the letter when you made the call to Mr. Piper?

A I had seen a report of the letter -- that report of the letter.

Q Which report do you have reference to?

A My recollection is that this appeared on the Dow Jones News Service, this first part here. We were asked by our New York desk to get comment from Piper Aircraft on this, the content.

Q And this, as you indicate, represents the first two paragraphs of Exhibit 40, that is, of the text of

Exhibit 40?

A Yes.

Q Specifically, Mr. Ehrich --

THE COURT: In other words, New York asked you to find out about whether the Piper family were going to get additional consideration for their own stock? Is that what you wanted to get comment on?

THE WITNESS: Yes, whether there was --

THE COURT: Whether there was anything to that?

THE WITNESS: New York wanted to know, as I recall, whether there was such an agreement.

THE COURT: Why did they call Pittsburgh to find out instead of calling themselves?

THE WITNESS: The Journal's practice is to have the bureau that covers a specific company handle all questions to that company.

THE COURT: Was the company located in Pittsburgh?

THE WITNESS: It is located in Loch Haven, Pennsylvania, which is within our district.

BY MR. PENNOYER:

Q Do you have any recollection now, without reference to your notes, of your conversation with Mr. Deming?

A You say without reference to my notes?

Q Yes.

A All I recall is what is in those notes. That is my record of what took place.

Q Without referring to that, do you have any recollection at this moment?

A No. That is a year and a half ago.

Q So if I asked you to state what you said to Mr. Deming and what he said to you, without reference to your notes, would you answer?

A No.

THE COURT: More importantly, did you put down everything you and Mr. Deming talked about or did you distill and extract the things you particularly were interested in?

THE WITNESS: What is on that sheet of paper are full comments that I was interested in. The words there represent his words. I did not take down every sentence he said.

THE COURT: In other words, the conversation was more expansive than the material that you actually recorded? You just recorded things you were intent on at that moment?

THE WITNESS: Yes, sir.

Q And you didn't record in there your questions to Mr. Deming, did you?

A No. I never do.

Q The notes do not indicate the exact answers Mr. Deming gave you, do they?

A Those are exaxt quotes, answering my questions.

Q In other words, they are exact quotes, you say, to the extent they appear on those notes? These do not represent all the things said by Mr. Deming, do they?

A No. Our conversation included more than what is on there.

Q There was more to it than this?

A Yes.

Q And your questions were primarily directed to the question of the family package?

A Yes.

Q Is that correct?

A Yes.

Q What was the reason for your call?

A Yes, and the suggestion that there was something wrong about this in the letter by the two Chris-Craft directors.

MR. PENNOYER: Your Honor, in view of the witness's answers, I will withdraw my objection at this time.

DIRECT EXAMINATION CONTINUED

BY MR. ACKELL:

Q Mr. Ehrich, was the statement that you prepared,

that is, Exhibit 40, the result of your use of the notes, Exhibit 41?

A Yes.

THE COURT: Did Mr. Ehrich prepare this Dow Jones release?

MR. ACKELL: Yes, your Honor.

THE WITNESS: The portion starting with "In Pittsburgh, a Piper spokesman said" --

THE COURT: In other words, that represents your own handiwork and not somebody else's reaction to what you had learned? Are those your words?

THE WITNESS: I believe that is what I -- yes, I filed that to the Dow Jones News Service in New York.

Q At the time you prepared the statement contained in Exhibit 40, did you have in your possession any agreement between Bangor Punta and the Piper family?

A I had seen none.

MR. LIMAN: What did he say? Read the answer, please.

THE COURT: As I read Exhibit 41, Mr. Ehrich, it uses language that goes beyond what you say is your portion of Exhibit 40, is that correct, on the material that is included in Exhibit 40? For example, I happened to notice there was something about cash-in securities in Exhibit 41

but there is no similar reference in Exhibit 40. So I gather the impression that you edited Exhibit 41 in preparing Exhibit 40, is that correct?

THE WITNESS: Yes.

THE COURT: And the editing was your construction of the language that you recorded in Exhibit 41, is that right?

THE WITNESS: Well, part of this is in direct quotes

THE COURT: Do this for my sake, please: Just underline with this pen what you say is a direct quote on Exhibit 40.

THE WITNESS: Could I see my notes?

(Document handed to the witness.)

MR. ACKELL: Please read back the answer as to whether he had seen any agreement between Bangor Punta and the Piper family.

(Record read.)

THE COURT: What you have said is a direct quote as set forth on Exhibit 40 are the words "thoroughly spelled out in a preliminary prospectus," and that is all on Exhibit 40 which is a direct quote, is that right?

THE WITNESS: That is correct.

THE COURT: The balance of it is your edited version of the conversation you had with Mr. Deming?

THE WITNESS: That's correct.

Q Do you know if your bureau was assigned to cover the Piper matter in January, 1969?

A Yes, it was.

Q I show you Exhibit 42 for identification and ask you whether that exhibit represents a copy from your bureau which appeared on the broad tape on January 23, 1969?

A The first portion of this, yes, the part from Loch Haven, Pennsylvania.

MR. ACKELL: I offer Exhibit 42 for identification in evidence.

MR. PENNOYER: No objection.

xx (Plaintiff's Exhibit 42 for identification received in evidence.)

2 Q Did you, Mr. Ehrich, prepare the copy from which that broad tape statement appeared?

A No, I did not.

Q Do you know who in your bureau did?

A Yes.

Q What is his name?

A John Conti, C-o-n-t-i.

Q Before you came here today did you make a search of the files of your bureau for any statements made in connection with that portion of the broad tape?

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statements appearing in their files.

THE COURT: Pittsburgh is just 40 minutes from New York. I know it well.

MR. ACKELL: No further questions.

THE COURT: Sometimes, with the wind, it is 35 minutes.

Off the record.

(Discussion off the record.)

CROSS EXAMINATION

BY MR. PENNOYER:

Q Mr. Ehrich, was it your practice in writing releases with Dow Jones to indicate carefully in each instance a quotation by a spokesman?

A Yes.

Q And that was also your company's practice, wasn't it?

A Yes.

Q I show you Exhibit 40, Plaintiff's Exhibit 40, and I ask you to look at the next to the last paragraph and that is one of the paragraphs you prepared?

A Yes.

Q And that paragraph starts out, "A Piper Aircraft spokesman denied any implications of wrongdoing" --

A Yes.

Q --"In the May 8th agreement. He said that agreement thoroughly spelled out the preliminary prospectus provided protection for the Piper family if the market value of the securities they are to receive is less than the securities to be offered to other Piper shareholders," and then it starts out with a new paragraph?

A Yes.

Q And that reads, "The general exchange offer is valued at $80 a share."

Now, that new paragraph is not attributed to any Piper spokesman, is it?

A No, it is not.

MR. PENNOYER: Your Honor, I have no other questions except those based on the notes.

THE COURT: We will just pause for a minute.

(Pause.)

Q Mr. Ehrich, as you talked to Mr. Deming on the telephone, were you typing or writing?

A I was typing.

Q And what is your telephone like? How does it work? How did you hold it to your ear?

A With an ear -- ear rest, shoulder rest.

Q I see.

You had it tucked into your shoulder?

A Right.

Q And you were holding your ear down to it?

A Yes.

Q And you were typing as you talked to Mr. Deming?

A Yes, I was.

Q In other words, he would make a statement and then you would be asking him the next question as you typed?

A Yes, I -- I lagged behind him a little bit.

Q And you didn't attempt to set down verbatim everything Mr. Deming said, did you?

MR. ACKELL: Objection.

THE COURT: Overruled. He has already said that. He said that what he did set down was verbatim and that there were other things said.

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Q You put those in there?

A Yes, when I write for the news service, for the paper.

Q Looking at Exhibit 41, I believe you testified that in your practice in making notes you attribute to the person you are talking to the statements wherever you are actually making quotations, isn't that correct?

A We attribute both indirect quotes and direct quotes. Direct quotes are put in quotation marks to show that.

Q What do you mean by direct quotes and indirect quotes?

A A direct quote would be his exact words.

Q Words.

And an indirect quote would be "Somebody said that" -- something?

A Yes.

Q And that wouldn't necessarily be an exact, verbatim text of what the person said?

A That's right.

Q Now looking at Exhibit 41 in your notes, it says:

"Further" -- and I will ignore the misspelling there -- "Further said b-p would make exchange

offer to shareholders securities and/or cash with value of $80 a share."

Do you see that?

A Yes.

Q Wouldn't you call that an indirect quote?

A No. The word missing is "it."

"It further said that Bangor Punta would make" -- or "b-p" would make.

"It" refers back to this prospectus.

MR. ACKILL: Would you read that answer back, please.

(Answer read.)

THE WITNESS: No. The "it" would refer to the agreement. I don't know if that is the same as the prospectus. My memory --

Q Are you saying that your notes refer to the May agreement?

Did you have that before you when you spoke to Mr. Deming?

A No. I had no agreement before me.

Q Did Mr. Deming say the words "further said"?

A Yes.

MR. PENNOYER: No further questions.

THE COURT: Did he use that language, "further

said," or are you making the statement that he added additional statements?

THE WITNESS: No. He said, "It further said."

THE COURT: "It further said"?

THE WITNESS: Yes. My notes have "further said." I left out the "it."

THE COURT: I see. "It" referring to the agreement?

THE WITNESS: Yes.

THE COURT: I think I would like to have you take Exhibit 40 and Exhibit 41 and look at them together to see whether 40 tracks with 41, and, if not, to what extent.

Give those two exhibits to the witness.

MR. PENNOYER: I am giving the witness a copy of Exhibit 41.

THE COURT: I think the way we want to do this is to take 41, which is your report of conversation, and take it sentence by sentence, to see whether the particular sentence carried over into the Dow Jones Broad tape release, and, if so, in what form, and, if not, let us know that to be so, starting with the top line.

Start out with "We do have an agreement with Bangor to option our stock to Bangor."

That was a direct quote, wasn't it?

THE WITNESS: Yes.

THE COURT: What is the language in Exhibit 40 that compares with that, if any?

THE WITNESS: There is none.

THE COURT: There is none?

THE WITNESS: No.

THE COURT: The next line says:

"We est. A package of securities."

Is that the end of a thought?

THE WITNESS: It is the end of a sentence, yes.

THE COURT: Is that carried over into the broad tape?

THE WITNESS: No, it is not.

THE COURT: And the three letters, "est."

Do I correctly read that as "estimate," or is that some other word?

THE WITNESS: It is my abbreviation for "estimate" or "establish."

THE COURT: Which do you think it is here?

THE WITNESS: My guess is that it is "establish."

THE COURT: Establish. But that was not carried into the broad tape?

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THE WITNESS: That's correct.

THE COURT: The next line is:

"this strictly a contract between Bangor-Punta and the family."

Is that in the broad tape?

THE WITNESS: There is reference to an agreement between Bangor Punta and the family.

THE COURT: In other words, that was characterized in the broad tape how? By what language?

THE WITNESS: A Well, all I say is that there is reference in the last paragraph of Exhibit 40 to an agreement between -- an arrangement between the Piper family and Bangor Punta. This specific quotation is not referred toin the --

THE COURT: That is not referred to?

THE WITNESS: That's right.

THE COURT: When I say "not referred to," that is not used in the broad tape, is that right?

THE WITNESS: That's correct.

THE COURT: Now the next sentence is:

"until whole exchange offer becomes approved, details of any agreements we have wouldn't be made available."

Where is that?

THE WITNESS: That's not in the --

THE COURT: That was omitted entirely?

THE WITNESS: In the broad tape, yes.

THE COURT: Now that concludes what you and Mr. Piper were talking about so far as your quoted notes are concerned?

THE WITNESS: That's right.

THE COURT: And you say there was other conversation but you didn't make note of it at the time?

THE WITNESS: That's correct.

THE COURT: Now we take up the conversation with Don Deming, who you referred to as a New York City attorney for Piper, and that refers to a telephone conversation with Mr. Deming on July 16, 1969, is that correct?

THE WITNESS: That's correct.

THE COURT: Now the first sentence there is:

"that is one of the provisions of the agreement on May 8."

Is that sentence, that quoted matter, in the broad tape release?

THE WITNESS: No, it is not.

THE COURT: The next sentence is:

"all thoroughly spelled out in the prospectus."

That, you told me before, is the only portion of your telephone interview which is directly quoted in the broad tape except for the word "all," am I correct?

THE WITNESS: Yes.

THE COURT: Now the next sentence is:

"i think all Piper shareholders are aware of it."

Does that appear in any form in the broad tape?

THE WITNESS: No. My copy has the sentence,

"He stressed that all terms of the Piper family agreement were made public in the" -- and I have a typographical error in my copy here, in the last line (indicating).

THE COURT: In other words, your original of the broad tape is somewhat different from the Xerox copy of Exhibit 40, which has been supplied here?

THE WITNESS: The last line, yes. The typographical --

THE COURT: Yes. At all events, you think that the sentence in your Exhibit 41, your material,

"i think all Piper shareholders are aware of it." is represented by the language in the broad tape, "all terms of the Piper family agreement were made," and then there is a word misspelled on your

copy of the broad tape, but it intends to mean "public," is that right?

THE WITNESS: It should mean "public." That sentence should have read --

THE COURT: Is the word "previously" something that was added in the broad tape that did not appear in the quoted matter?

THE WITNESS: There is no quoted matter in that sentence.

THE COURT: In other words, the broad tape statement that this was made public is comparable to what you heard on the telephone, but the word "previously" was supplied by the editor of the broad tape?

THE WITNESS: No. It was supplied by me.

THE COURT: Supplied by you?

THE WITNESS: That sentence represents the to two statements by Mr. Deming that it was all thoroughly spelled out in the prospectus and that Piper shareholders were aware of it.

THE COURT: But the word "previously" was a supplied word?

I am merely trying to track the two --

THE WITNESS: It didn't appear on my copy. It appears on yours.

THE COURT: Yes. Does that mean as you sent the material in from Pittsburgh to New York for publication on the broad tape you didn't use the word "previously," but New York supplied it?

THE WITNESS: No. Let me explain something, please:

This material goes to New York on a teletype machine and is sent back out in this form.

THE COURT: Did you teletype the word "previously" which appears on my Xerox copy of Exhibit 40?

THE WITNESS: Yes.

THE COURT: It doesn't appear on your copy of Exhibit 40?

THE WITNESS: That's a typographical error with the machines that we have in your office. This is the Dow Jones News Service machine.

THE COURT: Yes.

THE WITNESS: ~~May~~ My material went to New York on a teletype machine--

THE COURT: All right.

THE WITNESS: -- and was sent back out by the [illegible] service.

THE COURT: Now the next sentence that you have [illegible]

"10 million dollars is something that represents their arithmetic."

Is that correctly quoted?

THE WITNESS: Yes.

THE COURT: Is there anything there that is comparable to that in the Dow Jones broad tape?

THE WITNESS: Let me read the top -- I did not use that quote. What it refers to is --

THE COURT: That is all we are talking about: whether you used the quote.

This isn't in the broad tape.

Now the next sentence is:

"may 8 agreement said piper family would receive certain securities."

Is that the end of that thought?

THE WITNESS: Yes.

THE COURT: Is that reflected in the broad tape?

THE WITNESS: No. Not that sentence.

THE COURT: The next sentence is:

"if b-p gets more than the agreement provide piper family agreed to sell to b-p for specified b-p securities."

Is that thought reflected in the broad tape?

THE WITNESS: I can't make much sense out of this sentence.

No, it is not.

THE COURT: What you are saying is that if it is a direct quote, it is garbled, in any event, is that right?

THE WITNESS: Well, it has been abbreviated to the effect of garbling.

THE COURT: Now the next sentence you say should have had interposed the pronoun "it"?

The sentence reads:

"further said b-p would make exchange offer to shareholders securities and/or cash with value of $80 a share."

What is comparable to that statement in the broad tape?

THE WITNESS: That is where I -- from which I constructed the sentence,

"The general exchange offer is valued at $80 a share."

THE COURT: In other words, Mr. Deming said to you that Bangor Punta would make an offer, and that thought about the future is not in the sentence that you constructed, and Mr. Deming said that the offer would be

securities and/or cash, and you have omitted that in the sentence you constructed, and Mr.Deming said:

"With value of $80 a share," and you have restructured that as "valued at $80 a share"?

THE WITNESS: Yes.

MR. PENNOYER: Your Honor, may I respectfully object to the last question? I think the agreement is what says it, according to the witness.

THE COURT: What do you object to?

MR. PENNOYER: I don't think he is quoting Mr. Deming as having said --

THE COURT: I see.

(To the witness) What do you say, Mr. Ehrich, is referred to in the material:

"further said b-p would make exchange offer to shareholders"?

Is that referring to some document?

THE WITNESS: That is referring --

THE COURT: Or is that referring to Mr. Deming?

THE WITNESS: It is Mr. Deming's statement of what the May 8th agreement contains -- specifies.

THE COURT: So then my questions will be

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revised to take account of what has just been said.

MR. PENNOYER: Thank you.

THE COURT: Now the next sentence:

"purely as protective provision, if when you get 51 pc".

Is that the end of that thought?

THE WITNESS: No. That goes on.

THE COURT: That goes on to say:

"The Securities and Exchange Commission" --

THE WITNESS: No. "The Securities."

THE COURT: "The Securities you gave us didn't at that time measure up to $80 you gave them, you'll make it up."

Are you saying to me that is the language that Mr. Deming used?

THE WITNESS: Yes --

THE COURT: Or is that a liberal interpretation?

THE WITNESS: He probably said:

"If when you get 51 per cent the securities you gave us at the time didn't measure up to the $80 you gave them, you'll make it up."

THE COURT: Whom was he referring to by "you'll make it up"?

THE WITNESS: As I reconstruct this, on the basis of what I have in front of me, he says:

"Purely as a protective measure, if when Bangor Punta gets 51 per cent the securities Bangor Punta gave the Piper family didn't at the time measure up to $80 a share Bangor Punta gave the stockholders, Bangor Punta will make it up."

THE COURT: NOw where in the broad tape is there something that relates to that?

THE WITNESS: The reference to providing protection for the Piper family in the event -- let's see --

THE COURT: What is the language that you say is your editorialized version of what we have just quoted from Exhibit 41?

THE WITNESS: The reference to "provided protection for the Piper family if the market value of the securities they are to receive is less than the value of the securities offered to other Piper shareholders."

THE COURT: The next sentence in your quoted material is:

"the proposed package to be offered to shareholders is more attractive than the package the Piper family contracted for."

Where is that thought expressed in words or substance or in any related matter in the broad tape?

THE WITNESS: There is no reference to it.

THE COURT: The next sentence is, as quoted by you:

"it's not a sweetheart deal."

Is that stated in words or substance in your editorialized release?

THE WITNESS: Yes. In the top of the section where it says:

"A Piper Aircraft spokesman denied any implication or wrongdoing."

THE COURT: The next is:

"it's quite the opposite."

Would you carry forward that thought or is that in the same language that you have just called my attention to?

THE WITNESS: That's expressed in that sentence I just read,

"Denied any implication of wrongdoing."

THE COURT: So he said to you, "It is not a sweetheart deal. It is quote the opposite," and from that you constructed the statement, "A Piper Aircraft spokesman denied any implication of wrongdoing in the

May 8th agreement"? Is that right?

THE WITNESS: That sentence, "Denied any implication," et cetera, reflects those two sentences, and Mr. Deming's contention that it had all been made public previously.

THE COURT: Now the final thought which you quote:

"At that time, the Piper package was worth less than $80 even less now."

Where is that thought expressed in the release to the public?

THE WITNESS: In the sentence "the specific arrangement between the Piper family and Bangor Punta was worth less than $80 a share at the time it was concluded and is worth even less now. . . " the Piper spokesman said.

THE COURT: And the final statement in your quoted matter is:

"Wouldn't go over $80."

That is the final statement on that page.

Where is that reflected in your public release?

THE WITNESS: Nowhere directly.

THE COURT: What does that refer to? Do you recall?

THE WITNESS: I believe he said something to the effect that:

"at any event, it wouldn't go over $80."

THE COURT: What wouldn't go over $80?

THE WITNESS: The Piper -- the package to be offered to the Piper family.

THE COURT: Now, on the second page of Exhibit 41 you continue with the quotes, is that right?

THE WITNESS: Yes.

THE COURT: And the next thought is that you quote:

"assume they're taking current market values. this has been no secret since may 29."

First of all, did Mr. Deming say, "assume they're taking current market values"?

THE WITNESS: Yes.

THE COURT: "this has been no secret since may 29."

THE WITNESS: Yes.

THE COURT: Do you recall now what that referred to and in what context that was mentioned?

THE WITNESS: No, sir. I would only be guessing.

THE COURT: Is that thought reflected anywhere in the broad tape?

THE WITNESS: No -- well, except that he said there has been -- the secret here may refer to -- may be reflected in the sentence:

"he stressed that all terms of the Piper family agreement were made public previously."

I don't know if that is the --

THE COURT: Well, does that refer to -- all right.

The next quoted matter is:

"Bangor registration of May 29."

What does that mean?

THE WITNESS: I believe I asked him what happened May 29th, something to that effect.

He said it was the Bangor registration of that date.

THE COURT: Is that reflected in the broad tape?

THE WITNESS: No, it is not.

THE COURT: The final thought:

"There's no hidden deal. There never has been."

Is that reflected anywhere in the broad tape?

THE WITNESS: Yes, in the sentence:

"He stressed that all terms of the Piper family agreement were made public previously."

THE COURT: All right.

MR. PENNOYER: Just one further question, your Honor.

BY MR. PENNOYER:

Q Mr. Ehrich, I show you a letter, which is finding 108A. It is contained in 108A.

I ask then whether that letter appears to be the letter which prompted the call from your New York office to you in the first instance about the Piper matter?

A Yes. Parts of that letter appear to be quoted directly in the initial portion of that.

* * *

MR. KUSHNER: Your Honor, may I state I would hope there can be some reasonable agreement prior to cross-examination as to what is relevant to the commission's action? Otherwise I have no alternative but to cross-examine Mr. Flick about every single subject he is asked about.

THE COURT: Well, I am not terrorized by that prospect.

MR. RYAN: I have great difficulty in determining what is relevant to the commission's action. The witness is here for your examination.

THE COURT: Let's proceed in regular order.

J O H N E. F L I C K, called as a witness by Banger Punta Corporation, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RYAN:

Q Could you tell us your education, Mr. Flick?

A Yes. I attended college at Northwestern University and about one semester at the University of Pennsylvania. I attended and graduated from Northwestern University Law School in 1948.

Q Are you a member of the bar of any state?

A I am a member of the bar of the State of Illinois, State of California, and the federal court for the Central District of California.

Q Could you please tell us your employment background since you graduated from law school?

A In 1948 I was employed as counsel for an insurance company in Bloomington, Illinois. About a year later I became a member of the faculty of what is now California Western University Law School, in San Diego, California, from which I was called to active duty in 1950, at the time of the Korean War, stayed in the military service for approximately 12 years, in the Judge Advocate General's Corps.

That particular experience broken down would be essentially this: During the first three years I performed, as most junior officers did, mostly criminal type work, trying and defending cases and the second three-year period I was a member of the law faculty at the United States Military Academy at West Point, and during the final six years I was specializing in government contracts and in litigation on behalf of the government, which then brought me to 1963, when I resigned my regular commission to accept a position with Litton Industries as counsel, was with Litton Industries

for a little more than four years. I first started out with them involved in government contracts but soon became involved in mergers, and situations and securities work during the time when they were growing from approximately 300 million to a million seven in gross revenues.

In 1967 I became vice president, general counsel and secretary of Bangor Punta Corporation, remained with them until about the first of the year of 1970, when I returned to California with a small company known as Cosmodyne, in which my role there was really to start to turn more toward a managment role.

Shortly after I arrived in California I was approached by the Times Mirror Company to inquire if I would be interested in becoming their general counsel, and Times Mirror of course is a very prestigious company and after some consideration I accepted that position and hold that position at the present time.

Q Are you an officer of the Times Mirror?

A Yes. I am vice president, general counsel and secretary of Times Mirror.

Q I direct your attention to May 8, 1969. Do you recall that day?

A Yes, sir, I do.

Q Do you recall being at the offices of Chadbourne

Parke?

A Yes, sir.

Q Do you recall what you were doing in those offices on May 8?

A Yes. On the morning of May 8 a good many of us gathered at the Chadbourne offices, including Mr. Wallace, myself, Mr. Martin, other people from Bangor Punta --

Q Who is Mr. Wallace?

A He is and was president of the company, Bangor Punta.

Q Who is Mr. Martin?

A He was on my legal staff at that time. He was any securities specialist.

Q Who else was at this meeting?

A Mr. ~~Suri~~ Laeri of the First Boston Company, I believe Mr. Arning was there from First Boston -- from Sullivan & Cromwell, representing First Boston -- certainly Messrs. Deming and Leather, from the Chadbourne firm were there, and a couple of members of the Piper family, as I recall, William Piper and Howard Piper, I believe. I am sure there were others. I am sure I have not named them all.

Q Could you tell us to the best of your recollec-

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tion what occurred on that date?

A Well, on that particular morning, the morning started off with some continued negotiations as among Mr. Wallace, speaking to the management of Bangor Punta, and the Pipers and Mr. Luri of First Boston. Ultimately an agreement was reached under which Bangor Punta was to purchase the shares of certain members of the Piper family, and also, of course, included in this agreement was a further provision that Bangor Punta would make an offering for the remaining Piper shares.

Q Did anything occur after this agreement was reached between the parties?

A In contemplation that an agreement would be reached that morning, a proposed press release had been drafted, which as I recall had been drafted by the Bangor Punta public relations vice president, Jack Milne. This was reviewed by all partids, that is the Chadbourne firm, representing the Pipers, Mr. Martin and myself, representing Bangor Punta, and Mr. Arning, as I recall, examined this on behalf of First Boston.

Ultimately the words were arrived at and at this point I then instructed, as I recall, Mr. Martin to get in touch with the New York Stock Exchange and advise them that such an announcement would be forthcoming, so

that if they wished to take any action insofar as the trading of the stocks of the companies were concerned, they could do so.

Mr. Martin did this and as it turned out they did suspend the trading in the two stocks --

Q Who suspended the trading?

A New York Stock Exchange. Then ultimately, as I recall, either Mr. Martin or myself read the entire press release to the representative of the New York Stock Exchange before it went out over the tape and to the other news services.

Q In the course of preparing the press release, were there revisions made or discussion between counsel concerning the language in the press release?

A Oh, yes, certainly.

Q Could you tell us, to the best of your recollection, the substance of those discussions.

MR. KUSHNER: Your Honor, I don't want to interrupt the witness --

THE COURT: It is your duty to interrupt with any proper objection.

MR. KUSHNER: I don't believe this is relevant to the commission's case. I don't know how your Honor wants to proceed as to my objections as to relevance.

THE COURT: I think it is your duty to make such objections as you feel called upon to make in the sincere protection of your client.

MR. KUSHNER: I object as to relevance.

THE COURT: Overruled.

MR. KUSHNER: May I have a continuing objection about this May 8 release, your Honor?

THE COURT: No. I insist on having called to my attention what is irrelevant at the time so that I have the last opportunity of determining the matter.

MR. KUSHNER: Yes, sir.

MR. RYAN: Could you read the answer up to the point where the witness stopped?

(Record read.)

A Well, in essence, what was discussed was that it was a common feeling among all of us, that is, the counsel present, that this was a material matter which under the New York Stock Exchange rules and under the Texas Gulf Sulphur decisions that we had an obligation to disclose to the public so that there would be no opportunity for any accusations or any inside trading that could occur.

Of course at this time we were mightily concerned because an awful lot of people at this point

knew about it. We had a whole roomful of people right there, plus some others, and so it was that type of discussion that went on in this regard, Mr. Ryan.

Q Other than the New York Stock Exchange, did you call any other agencies concerning the issuance of the press release?

A We did not.

THE COURT: Would you just define, so that we don't make any mistake about it, what the words "in this regard" connote?

Please read back the last part of the answer. I think I understand what you were saying but I want to be sure it is expressed on the record.

(Answer read.)

THE COURT: Please define what the words "in this regard" mean.

THE WITNESS: Your Honor, what I was referring to there was the fact that we felt that since there was such wide knowledge of this --

THE COURT: Of what?

THE WITNESS: Of the existence of the transaction.

THE COURT: What transaction? I want it spelled out right here.

THE WITNESS: Fine. Between Bangor Punta and the members of the Piper family.

Q Concerning the purchase by Bangor Punta of the Piper family shares?

A Yes, sir.

Q Referring to the so-called May 8 agreement?

A May 8 agreement, yes, sir.

Q Was the press release issued to the news services?

A Yes, sir, it was.

Q Mr. Flick, did there come a time subsequent to the May 8 meeting at which you had any discussions with any of your fellow executives or anyone else concerning the purchase of Piper shares?

A Yes, sir, there was.

Q Do you recall when you had your first conversation with anyone concerning the purchase of Piper shares?

A My best recollection is that upon our return, that is, Mr. Salgo and my return from an executive meeting in Phoenix, Arizona, which would have been over the weekend of about the 9th to the 11th of May, 1969, that Mr. Salgo possibly either on the following Monday, which would have been the 12th, or the 13th of May -- I

can't be precise -- called to my attention that he had had a call, I believe it was, from an individual by the name of Freedman who presumably was representing Mr. Cornfeld of the Fund of Funds --

MR. LIMAN: Objection. Is he recounting when he says "presumably"?

THE COURT: Go ahead.

Q Would you tell us to the best of your recollection the substance of your conversation?

MR. KUSHNER: I object on the grounds of relevance, so far as the commission's case goes.

THE COURT: Overruled. Go ahead.

I will take it subject to a motion to strike out later on. I can't tell now just what the commission's case may trench upon.

MR. KUSHNER: I understand that, your Honor.

A As best I recall the substance of what was said, was that a call had been received from this fellow Freedman that he represented Mr. Cornfeld and the Fund of Funds and had asked Mr. Salgo if Bangor Punta was interested in purchasing shares of Piper stock.

Q Do you recall approximately when you had this conversation with Mr. Salgo?

A As I say, Mr. Ryan, either the 12th or the 13th of May, to the best of my recollection.

MR. RYAN: Your Honor, in the proposed agreed findings, 91,91A, 91B and 91C, that relates to this subsequent activity of this witness concerning the Fund of Funds shares and I don't intend to offer any further testimony on this point.

THE COURT: Are you offering those in evidence?

MR. RYAN: I can do that now, but I think that what we are going to do at some point of time is to read into the record each one of the proposed findings that we have agreed upon between the parties.

MR. LIMAN: That is our plan by Monday, your Honor.

MR. KUSHNER: Your Honor, the reference to agreed upon doesn't include the commission. We have not at all been asked to nor have we agreed to these particular proposed findings.

THE COURT: Mr. Kushner, in your absence the ground rules were these: I said I wanted one complete trial record without incorporation by reference to findings that had been discussed bythe lawyers in advance of the trial, and in advance of the trial the lawyers had signified to each other that they anticipated that on the

trial they would state that certain matters were agreed-upon matters. So I said that until and unless the matters previously agreed upon were actually offered in the trial record they would not be considered part of the trial record, and that was so that we wouldn't have a lot of pieces of paper with incorporation by reference and drive everybody mad trying to find out what the trial record really consisted of.

MR. KUSHNER: Yes, sir.

THE COURT: So that if you have any matters that have been agreed upon with any of the lawyers in respect of your problems in the SEC case, bear that in mind for the purposes of the trial record.

Now, if matters that are agreed upon by all the lawyers other than the commission should arise and that are pertinent to any part of your case, unless and until you signify that they are agreed upon by the commission also, they will not be considered proved so far as the commission is concerned.

MR. KUSHNER: Fine, your honor.

MR. RYAN: What was the last question and answer?

THE COURT: You said 91 was going to be

offered.

MR. RYAN: Fine.

Q Did there come a time when you learned that Chris-Craft Industries had been instructed by the SEC not to purchase Piper shares?

A Yes, I ultimately learned of that.

Q Do you recall when you learned that and the circumstances of your learning that?

A My best recollection of that would have been at the late-night meeting at the SEC, attended by myself and Mr. Wallace, in Mr. Sporkin's office with various members of the SEC staff.

Q Do you recall the date? I believe it was May 23.

A It was a Friday night.

Q May 23, 1969. I don't think there is any doubt about it.

MR. LIMAN: Well, there is no dispute that Friday night was the 23rd.

Q Could you tell us, please, what you were told concerning the subject?

A At that time, as best I recall, the question came up -- was brought up by Mr. Sporkin concerning the purchase of Piper shares by Bangor Punta, and at that time Mr. Sporkin and his group and Mr. Wallace and myself had a very sharp disagreement as to the application of Rule 10(b)(6)

to such purchases, and it was during that time, as I recall, that Mr. Sporkin mentioned that he had told the Chris-Craft people some time before that they were not permitted to make such purchases.

Q Had you ever heard of such an instruction prior to that time?

A No, sir, I had not.

Q Prior to your discussions with the SEC, had you ever discussed this subject with anyone at Bangor Punta?

A Yes, sir, I had.

Q Can you tell us whom you discussed it with and what were the circumstances of such discussions?

A Yes --

MR. KUSHNER: I object on the ground of relevance.

THE COURT: Overruled.

A I would say that at about the time -- once again, I have difficulty placing an exact date -- at about the time that the offer of the Fund of Funds Piper shares was called to my attention by Mr. Salgo -- I think at about that time Mr. Martin, my securities specialist on the staff, probably called my attention to the proposed Rule 10(b)(13) that the SEC had put out subject to future approval. In that particular rule, as I recall -- proposed rule -- they had language to the effect that an exchange offer -- that

in exchange offers it had always been their internal position, or words to that effect, that the purchase of shares of the target company after an announcement of an offer was made was not proper under 10(b)(6).

At that time Mr. Martin and I had never understood 10(b)(6) to mean that at all. As a matter of fact, Mr. Ryan, at or about that time you or Mr. Hogeland of the Webster, Sheffield firm were in our office on another matter and we had you look at it and as I recall we all came to the same conclusion, that that had never been a proper use of 10(b)(6). However, we felt that under the circumstances we should take a conservative position and therefore what we instructed management, in effect, was, or in substance, that in view of that language that we should not involve ourselves in the soliciation of any shares, in other words, that we thought it proper to buy shares of stock but only if they were unsolicited and not over an exchange.

Q Did you give that advice to any of the executives at Bangor Punta?

A Yes. I am sure that Mr. Martin and I both told Mr. Wallace and Mr. Salgo, the chairman of the board.

Q Did you ever learn that Bangor Punta purchased some Piper shares from American Securities Corporation?

A Yes, sir, I did.

Q Did you participate in those discussions?

A No, sir, I did not.

Q Did you ever learn that Bangor Punta purchased Piper securities from Bay Securities Corporation?

A Yes, sir.

Q Did you participate in those discussions at all?

A No, I did not.

Q Mr. Flick, I direct your attention to the period 1969 and ask you if you recall having any discussions or giving any consideration during that period concerning the possible disposition by Bangor Punta of its stock ~~into~~ interest in the Bangor and Aroostock Railroad?

A In 1969?

Q Yes, sir.

A Yes, I recall back in the, oh, I would guess it was the spring or early spring of 1969, that Mr. Salgo --

Q Who was Mr. Salgo?

A Chairman of the board of directors of Bangor Punta -- discussed with various persons within the company, as, frankly, we had been doing ever since I had been with the company, a possible solution to the Bangor and Aroostock situation, as to whether it made sense to make it part of a bigger organization, or what to do with it. And so, in any event, as a result of his raising the issue again, Mr.

Timothy Reames, who was our tax counsel, then started to look into a proposal which Mr. Salgo had had in his mind of possibly paying or distributing to Bangor Punta Corporation shareholders shares of stock in the Bangor and Aroostook Railroad, establishing a market for such stock and then possibly moving in one of several ways with this company -- with the railroad -- excuse me.

Q Prior to these discussions in the spring of 1969, did you ever participate or hear of any discussions prior to that date concerning possible disposition of the Bangor and Aroostook Railroad?

A Yes. As I say, I am sure it was shortly after I came to the company in 1967 that the question of what to do about the railroad had been a subject of general discussion. Then later on we had discussions with the D & H Railroad, or holding company, at which time there was a possibility that we would have acquired that company and perhaps combined it with the Bangor and Aroostook Railroad. That was one possibility.

Mr. Salgo had had discussions with people of the Boston Maine, and the Maine Central, I understand, to see about a possible consolidation or combination.

Also, as I mentioned previously, he had this notion of the possibility of distributing some of the stock as a

dividend. All of these things were discussed at one time or another over a long period of time.

Q And these discussions concerning the Delaware & Hudson and the Maine Central and the Boston and Maine, do you know whether those discussions were kept within the confines of Bangor Punta or were they publicly disclosed?

A As I recall, at one time there was quite a long article about it in the Wall Street Journal. I don't remember the date.

THE COURT: About what?

THE WITNESS: About a possible combination of --

THE COURT: D & H?

THE WITNESS: Well, that one was publicized, too, your Honor, but also the possible combination of Bangor and Aroostook with Boston and Maine or Maine Central.

Q I show you Defendant's Exhibit V for identification. Could you tell us if you can identify that document, please?

A Yes, I believe I can.

Q What is Defendant's Exhibit V?

A This is a memorandum dated March 30, 1969, addressed to me from Timothy P. Reames, our tax counsel, and this concerned generally the plaintiff which Mr. Salgo had raised about the possibility of distributing part of the stock of the Bangor and Aroostook Railroad to the shareholders of Bangor Punta Corporation.

Q Do you note any writing in your handwriting on that document?

A Yes. There appears to be a note here in my hand which says "Copy: Mr. Salgo."

Q Do you know what you meant by "Copy: Mr. Salgo"?

A This was Mr. Salgo's subject and, therefore, he was the likely person to read it.

MR. RYAN: I offer Defendant's Exhibit V for identification in evidence.

MR. KUSHNER: Your Honor, I am not sure whether the offer extends to some handwritten words on the first page or not.

MR. RYAN: I will exclude the handwritten words to the left of the page, your Honor, but the language saying "Copy: Mr. Salgo," Mr. Flick testified to that.

THE COURT: Any objection?

MR. KUSHNER: No objection.

MR. LIMAN: No objection from me, your Honor.

(Defendant's Exhibit V for identification received in evidence.)

Q Subsequent to your conversations with Mr. Reames, what next occurred, to the best of your recollection, concerning the Bangor and Aroostook Railroad?

A I think probably two or three days later, on

April 1, 1969, we had a meeting of the board of directors of Bangor Punta Corporation, which I attended, and one of the subjects that was raised at that particular meeting by Mr. Salgo was a general review of the status of the company and some of the matters which the management of the company had been considering, specifically, that the management had discussed among itself -- when I talk about management here, I am talking, for the most part, about Messrs. Salgo,who was chairman, Wallace, who was president and chief executive officer and, as a matter of fact, he became chief executive officer at that meeting, and Gordon Robertson, who at that meeting became the co-chairman of the board of directors. So he reviewed some of the matters that the management had been considering to improve the status of the company, some of which were the possibility of selling off portions of some of the more profitable organizations, such as Smith & Wesson, as I recall, the boating group, that type of company which at that time were quite successful, but the management had dismissed that idea, thinking that they did not wish to sell off parts of what was good.

So therefore he wanted to just share his thoughts as to what type of plan should be made for such things as process engineering companies, the textile companies, the railroad. So then growing from that discussion he

appointed a committee, as I recall Mr. Hutchins, a Mr. ~~Biel~~ Seal, a Mr. Stone, to look into the subject of the whole railroad and to consider what we should do with the railroad, should we keep the railroad, should we spin-off part of it in a ~~divided~~ dividend or what.

That is my recollection, Mr. Ryan.

Q And subsequent to this meeting of the board of directors on April 1st, what next occurred, to the best of your recollection, concerning the Bangor & Aroostook Railroad?

A I would say that my next independent recollection was the next board of directors meeting, which was on the 21st of May, 1969, at which time Mr. Hutchins, on behalf of the committee we have just spoken about, made a report to the board, in which he reviewed various possibilities as to what should be done:

No. 1, keeping it.

No. 2, the possible joining of the Bangor & Aroostook with some other railroad system.

No. 3, the possible sale of the railroad.

And I believe at that time -- I would have to refresh my recollection from the minutes, but that at that time he mentioned the possibility of Mr. Dumaine's interest in this thing -- in this railroad -- excuse me -- and Mr. Salgo, during this meeting, was very much opposed to the sale of the railroad and was proposing various counter-measures.

I would say that to me this was the first indication that we were going to have an unpleasant situation within the company, at this meeting.

MR. KUSHNER: Your Honor, I object to the witness' characterization.

THE COURT: All right.

This was an indication to you that there was some dissension in the board. Now is that what you mean?

THE WITNESS: Yes, your Honor.

THE COURT: All right. The characterization is stricken out. The answer will stay.

A (Continuing) So at about -- I would say that probably at about this point in the discussion I was called out of the meeting.

As I recall, John Martin had received a call from the Securities and Exchange Commission and came and told me, and I left the meeting, and Mr. Wallace recorded the minutes for the remainder of the meeting, and I guess that will have to speak for itself.

MR. LIMAN: Could we have a five-minute recess?

(Recess)

MR. RYAN: May I continue, your Honor?

THE COURT: Yes.

BY MR. RYAN:

Q Mr. Flick, when we left off, you had testified

that you left the meeting, the board of directors meeting, on May 21st:

After leaving the meeting, did you discuss with anyone at Bangor Punto what occurred after you left the meeting concerning the Bangor and Aroostook Railroad?

A Yes. Of necessity, since the minutes for the board meetings were prepared in my office, Mr. Wallace gave me his notes on what had occurred, and the minutes of course were assembled, so then, of course, I learned of it and I am sure -- my best recollection is that I must have talked with him about it at that time.

Q Mr. Flick, do you recall what next occurred concerning the Bangor and Aroostook Railroad?

A Well, frankly, for some period of time I don't recall that anything much occurred. We were all pretty much engaged with other matters at that time.

As I indicated to you, the dissension on the board had arisen. It was apparent to me --

MR. KUSHNER: I object. I don't believe the witness' opinion is relevant. I am interested in what was said.

THE COURT: Yes.

Q Would you please limit yourself to what conversations you may have had with any of your fellow executives

concerning the Bangor-Aroostook Railroad subsequent to the May 21st meeting?

A Well, I can't place any dates on conversations, but certainly I had conversations with Mr. Salgo, and the gist of the substance of those conversations were that he was just unalterably opposed to any transaction with Dumaine.

Q I show you Plaintiff's Exhibit 2. Have you ever seen that document before, or a copy of that document?

A I am sure that at -- yes, I have seen it, certainly.

Q And did you ever have any conversations with anyone concerning Plaintiff's Exhibit 2?

A No, I don't believe I ever did. I think that I received this as information.

Q Now what next occurred concerning the Bangor and Aroostook Railroad, to the best of your recollection?

A The best recollection I have is early in August of 1969. I was receiving some pressure from both sides on this, and this is what I mean:

I was receiving pressure from Mr. Hutchins to get on with the accounting and tax analysis that the

board had asked to be made, and at the same time, as I indicated earlier, I had had conversations with Mr. Salgo in which he was absolutely opposed to it.

Being in this situation --

Q Well, prior to August --

A Yes.

Q -- do you recall, Mr. Flick, that on July 18, 1969, the Bangor Punta prospectus for its exchange offer became effective?

Do you recall having any conversations with anyone prior to July 18, 1969, concerning making some statement in the prospectus concerning the affairs of the Bangor & Arcostook Railroad?

MR. LIMAN: Objection, leading.

THE COURT: Overruled.

THE WITNESS: May I answer?

Q Yes or no.

A Yes. I remember it.

Q Would you tell us, to the best of your recollection, when, where and with whom such discussion took place?

A Specific answer and general answer.

Specific answer: The representatives of First Boston and their law firm -- and here the representa-

tives of First Boston whom I principally knew was Mr. Reilly, and the principal member of Sullivan & Cromwell representing them, Mr. Arning, at or about this time were making a check, which we all thought was very normal, of the minute books and other records of the company, in accordance with what would have been a typical due-diligence type of search.

At that time --

THE COURT: Pre- or post-August?

MR. ARNING: Pre-August.

MR. KUSHNER: Your Honor, could we have the time fixed?

You said at or about that time.

Q Could you fix the time of your discussions with Mr. Arning and Mr. Reilly?

A Once again, I have to rely on my recollection. The best I can fix it -- it was prior to the effectiveness of the registration statement.

Q Well, would it be June or July?

A Oh, no. Certainly it would have been in July of 1969.

Q Now would you please tell us, Mr. Flick, the substance of your conversations with Mr. Reilly and Mr. Arning, and would you please identify anybody else who

was present at such conversations?

A Persons present: Mr. Reilly, Mr. Arning, Mr. Wallace, myself. I feel certain there were others in the room, but those are the only ones that I can positively identify.

Q All right.

Now can you tell us what the substance of the conversations was?

A Well, they were inquiring about various subjects concerning the status of the company. As I recall, one of the subjects that was discussed was the question of our interest, if any, in the company called or named Hispano-Suiza, with whom we had been having some discussions in Europe.

I think that it was at about this time that there had been some -- well, I know there had been some Congressional inquiry -- I can't place the date -- by some committee of the Senate, concerning the use of chemical mace, and chemical mace was manufactured by a company of ours in Pittsburgh, Pennsylvania, and, as I recall, they inquired about what, if any, effect these Congressional inquiries would have on that company.

And then they asked about the situation as far as the Bangor and Aroostock Railroad was concerned,

calling attention particularly to the minutes of the board.

Shall I continue?

Q Yes. What did you tell them concerning the Bangor and Aroostook Railroad?

A Well, I pointed out to them it was certainly my clear and distinct understanding that the board of directors had at most authorized further inquiries, further discussions, further considerations of alternatives, including keeping it, and that as far as I was concerned, there was no -- no -- there was no decision reached beyond that.

Q Did you say anything further?

A Oh, I think in the -- I am sure in the course of that conversation, as we had discussed among ourselves many times, we always felt that some solution --

MR. KUSHNER: Objection.

THE COURT: Is he saying what he told them or what he felt?

~~Objection?~~

Q Will you tell us to the best of your recollection the substance of what you told Mr. Arning and Mr. Laeri at that meeting?

A What I am attempting to relate here is that

we in the company felt that if we could solve the railroad question in one way or another, that it certainly would be beneficial to the company.

Q Did you discuss with Mr.Arning any of Bangor Punta's prior efforts concerning the railroad?

A Mr. Ryan, I am sure that I stated in a general way -- and this comes to the general part of the answer now -- I am sure that I stated in a general way that we had been looking at this situation for a possible solution to the railroad problem for a long time.

I can't sit here today and say whether I talked about D & H or Boston & Maine, or anything like that. I just don't recall that.

Q And do you recall anything else concerning either the Bangor & Aroostook Railroad or anything else, any other subject which took place at this meeting?

A It might have been also -- first of all, I preface it by saying that we were involved in many different kinds of business here, in the course of many different kinds of problems always arising..

MR. LIMAN: Objection. I move to strike, your Honor. I think he is going beyond the question, your Honor.

Q Would you please limit yourself, Mr. Flick, to discussions with Mr. Laeri and Mr. Arning concerning the Bangor & Aroostook Railroad?

Was there anything further than what you have testified?

A On the railroad? No. I am sorry. I misunderstood your question.

Q No. I redefined it.

A All right.

Q Now let us get back to August, Mr. Flick.

Now what occurred in August, 1969, concerning the B & A?

A As I started to indicate earlier, what I stated was, in shorthand, I was caught between the dissenting camps here, the Hutchins camp and the Salgo camp, if you want to call them that.

And so to proceed with what the board had directed, I asked Tim Reames, the tax counsel, to start spending more time on digging into -- or more specifically, the tax ramifications of any proposed solution to the Bangor & Aroostook problem, and he in turn worked with Mr. Priddle of the accounting staff.

My best recollection at the time is that I said to Reames that I didn't think anything was ever going to

come of this, but that we were under a directive of the board, and we better proceed to do what we could.

Q I show you Defendant's Exhibit W for identification.

Could you please examine that and let us know? Have you ever seen that document before?

A Yes, I have seen it.

Q And what is it?

A This is a memo dated July 2, 1969, from Timothy P. Reames to Nicholas M. Salgo, W. Gordon ~~Robinson,~~ Robertson David W. Wallace, John E. Flick, Stephen Galle, regarding the Bangor & Aroostook Railroad Company.

MR. RYAN: I offer Defendant's Exhibit W for identification in evidence.

MR. LIMAN: No objection.

MR. KUSHNER: No objection.

(Defendant's Exhibit W for identification received in evidence.)

Q Mr. Flick, did you ever have occasion to discuss with Mr. Reames any of the tax implications concerning possible dispositions of the Bangor & Aroostook Railroad?

A Yes, I did.

Q Would you tell us to the best of your recollection approximately when those discussions took place, or were

there a series of discussions?

A Oh, there certainly was more than one discussion because I deputized him to get involved in this project, and so in the nature of things I would call on him from time to time to let me know what was happening.

Q Well, did you ever have occasion to discuss with him any of the tax problems involved if Bangor Punta sold the stock of the Bangor & Aroostook Railroad?

A Yes. Essentially I guess one of the basic questions that he told me about was the whole question of establishing the basis of the stock in the hands of Bangor, to know whether or not you are going to have a capital gain or whether or not you are going to have a capital loss.

Now that was certainly one of the basic topics discussed.

Q Did Mr. Reames indicate whether he knew the basis for the stock, tax basis for the stock?

A I think he indicated that he did not know at that time.

Q Do you recall any discussions concerning a possible sale of the assets of the Bangor & Aroostook Railroad?

A Yes. He discussed with me that particular

question.

In that regard, what was considered to be a very difficult problem, as I explained it, was trying to ascertain the basis of the assets, which apparently went a long way back into the records.

Q Did he indicate to ~~Hou~~ you whether or not he knew the tax basis of these assets?

A He indicated to me he did not.

Q Do you recall any discussions with Mr. Reames concerning the fact whether Bangor Punto could utilize any tax loss it might realize on the sale of the assets of the Bangor & Aroostook Railroad?

A Yes. He indicated that that would -- that was certainly a consideration as to the way that the railroad was held or owned within Bangor Punta, as to whether once having ascertained either the basis of the stock or the assets, then whether Bangor Punta Corporation itself could use -- if there was a loss, whether it could use such a loss.

Q Did he indicate to you whether he had arrived at any conclusions on that subject?

A No. I don't recall that he did, no. He was exploring various things, various avenues.

Q Now going back to August of 1969, do you recall

what next occurred concerning the Bangor & Aroostook Railroad after your instruction to Mr. Reames to begin the necessary tax accounting?

A Well, I think that Reames and Priddle were working along at it. I don't really recall anything specific, no.

Q Do you recall whether you left Hangor Punta during August for military service?

A Oh, yes. The 29th of August, as I recall, having looked at the calendar, was a Friday, and I was due to go to the University of Virginia at Charlottesville to perform my two weeks of annual military duty. And so the 29th of August would have been my last day officially in the office until I returned again to the office on the 15th of September.

So during that intervening period I was in Charlottesville, Virginia.

Q Do you recall doing anything on August 29th concerning the Bangor & Aroostook Railroad?

Let me show you Defendant's Exhibit X for identification and ask you if you can identify that.

A Yes, I can.

Q And what is it?

A It's a memorandum dated August 29, 1969,

regarding Bangor & Aroostook from John E. Flick to Timothy P. Reames, with a copy to David W. Wallace.

Q And was it your customary procedure to make a memorandum such as Defendant's Exhibit X?

A Yes, it was, particularly if I was going to be out of the office for any period of time and there were matters that needed some action to push them ahead and get them going.

I would write memos on this to members of the staff who reported to me and I had a desk notebook, each with a name tab, and kept a copy to make sure that these things were being acted on.

MR. RYAN: I offer Defendant's Exhibit X for identification in evidence.

MR. KUSHNER: No objection.

MR. LIMAN: That is your initial on it, isn't it, Mr. Flick?

THE WITNESS: Yes, Mr. Liman, it is.

MR. LIMAN: No objection.

THE COURT: Received.

(Defendant's Exhibit X for identification received in evidence.)

Q What next occurred concerning the Bangor and Aroostook Railroad, so far as you are concerned, Mr. Flick?

A I returned to the office on the 15th of September, which was a Monday, and I don't really remember whether I was told at that time or whether possibly Mr. Wallace had called me in Charlottsville prior to my returning, as he usually did to keep me informed on matters that were going on during my absence, but at or about this time was when I learned of the action, the formal action, taken by the board of directors at a meeting on September 9.

Q And the formal action you are referring to is the resolution adopted by the board authorizing the sale of stock or asserts of BAR?

A Yes.

Q What next occurred, to the best of your recollection, concerning the Bangor & Aroostook Railroad?

A I may have attended some other meetings on it, I am not sure, but my next independent recollection is the meeting of September 29, in Mr. Salgo's office.

Q Who attended that meeting?

A Mr. Salgo, Mr. Wallace, Mr. Hutchins, Mr. Robertson, myself, Timothy Reames, and a lawyer from

Strasser & Spiegelberg, whose name was Preiskel, who was special counsel who had been brought in on this matter.

Q Did you mention Mr. ~~Wheeler~~ Wieler?

A No. I think Mr. ~~Wheeler~~ Wieler was there, and Mr. Galle, possibly, I am not sure.

Q Could you tell us the substance of discussions which took place on September 29?

A The substance was that Mr. Salgo indicated that further studies had been made regarding the tax and accounting ramifications of the proposed transaction that had been approved by the board on September 9 and that this analysis supported his conclusion at that time that we certainly should not sell stock under any circumstances to Mr. Dumaine and that we should go back to the board and make this all known to the board and just stop these discussions with Dumaine, and at this time the situation became very heated. Mr. Hutchins was very angry, Mr. Robertson, supporting Mr. Hutchins, was very angry and said that we should go ahead with what the board had approved at the September 9 meeting and if they were not going to do it, that he, Hutchins and Robertson, would resign from the board.

Many other words were spoken, but that was

certainly the substance of what occurred.

Q Do you recall anything else that occurred at the meeting?

A Well, I think that there was some arrangement made for Mr. Wallace to meet with a Mr. Cole who was an adviser to Mr. Dumaine, to further discuss the matter. I guess that would have been the next matter in the sequence of events.

MR. RYAN: Your Honor, it is going to take me maybe five minutes to finish.

THE COURT: All right, go ahead.

Q Can you tell us, Mr. Flick, what next occurred?

THE COURT: Would it inconvenience you to have the cross-examination after lunch? Do you have a plane or something?

THE WITNESS: I would like to get back as soon as I can, but I am at your --

THE COURT: How about by 3 o'clock, would that be all right?

THE WITNESS: All right. THE COURT: We will suspend at a quarter of 1 until 2 o'clock and within an hour you can be through.

MR. LIMAN: I am not so sure of that, your Honor.

THE COURT: I thought you said 10 or 15 minutes?

MR. LIMAN: Oh, no, sir.

THE COURT: Then I was mistaken.

MR. LIMAN: I said we wanted to put on an early witness.

MR. KUSHNER: Your Honor, I expect my cross-examination will take some time.

THE COURT: All right.

THE WITNESS: Your Honor, if we can finish it today, then, I would be most appreciative.

THE COURT: Well, I can go until five minutes past 7.

THE WITNESS: Fine.

MR. RYAN: We can stop here, your Honor, if that is all.

THE COURT: We will recess until 2:30.

(Luncheon recess.)

AFTERNOON SESSION
2.00 P.M.

THE COURT: All right, Mr. Ryan.

JOHN E. FLICK, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. RYAN:

Q Mr. Flick, when we adjourned for lunch, you testified that Mr. Wallace went to have a meeting, a luncheon meeting, with Mr. Cole, a representative of Mr. Dumaine. Did you have any conversation with Mr. Wallace or anyone else as to what was to be discussed at this luncheon conference?

A I don't recall that now.

Q Would it refresh your recollection if I suggested that Mr. Wallace was going to discuss with Mr. Cole, counsel for Mr. Dumaine, whether he could persuade Mr. Dumaine to change the form of the transaction from the sale of stock to the sale of assets?

A I think that is correct, yes.

Q Did you ever have any conversation with Mr. Wallace or anyone else after this luncheon conference as to the substance of the discussion?

A My best recollection is that -- is that Mr. Dumaine was still insisting upon a stock transaction. That was about the substance of it.

Q Now, what next occurred concerning th Bangor and Aroostook Railroad, to the best of your recollection?

A Well, the next thing of which I was informed was that on the -- I think it was on the 2nd of October, 1969, Messrs. Reames and Preiskel went to -- to Boston or Bangor, Maine, and there they met with Mr. Hutchins and Mr. Robertson and Mr. Dumaine and his people, and the next information I heard was that the transaction was closed for the sale of the stock of the railroad to Amoskeag, of which Mr. Dumaine is the president.

Q Now --

THE COURT: Can you fix the date of that latter conversation?

THE WITNESS: October the 2nd, your Honor.

THE COURT: In other words, you heard that there was a meeting in Maine?

THE WITNESS: Maybe it was October the 1st.

THE COURT: A meeting in Maine, and it was at that meeting that the transaction was arranged?

THE WITNESS: Yes, sir.

Q I believe you testified either Boston or Bangor, and I think it was Boston.

Now, Mr. Flick, do you recall at any time, either on July 29, 1969, or prior thereto, ever having a conversa-

tion with Mr. Leonard Gordon? Do you know who Mr. Leonard Gordon is?

A Yes.

Q -- in which Mr. Leonard Gordon asked you whether or not Bangor Punta would consider extending its exchange offer so that the shares of Piper Aircraft that Chris-Craft owned would go past the six-month period for 16(b) purposes, so that Chris-Craft could tender their Piper shares to Bangor Punta, and Bangor Punta as part of such agreement would arrange for a secondary of those Bangor Punta shares? Did you ever have a conversation in which Mr. Gordon made such a request of you, either in those words or in substance?

A Well, I have no recollection whatsoever of any such conversation.

MR. ~~LIMAN~~ Ryan: I have no further questions.

THE COURT: Does that mean that you don't remember any such conversation or that no such conversation, to the best of your recollection, took place?

THE WITNESS: Well, I mean that I have no recollection of such a conversation, your Honor.

CROSS EXAMINATION

BY MR. LIMAN:

Q Do you remember meeting with Mr. Gordon and others

A If you have read it from the deposition, I assume I did.

Q Was that the truth when given?

A Oh, yes, always to the best of my recollection.

Q And that is what you were trying to do ---

A Certainly.

Q -- in drafting this press release?

A Certainly.

Q I will hand you a copy of the May 8th press release which is in proposed finding 69 (handing). Is it fair to say that the first paragraph of this release summarizes the fact that an agreement was entered into?

A Yes, I think that is fair.

Q Look at the second paragraph. Was that in the May 8th agreement, the paragraph that says, "William Piper, Jr., who is president of Piper Aircraft, and David W. Wallace, chief executive officer of Bangor Punta, jointly announced the agreement and said they regarded the agreement as a first step in a proposed consolidation of the two companies"? Was that in the agreement?

A No, it was not.

Q Look at the next paragraph: "Under the agreement, the Piper family will receive a package of Bangor Punta securities for their shares of Piper Aircraft." Is that

what it says?

A Yes.

Q Did the May 8th agreement identify what securities the Piper family was to receive?

A Yes, it did.

Q In any of the earlier drafts of this press release was there any description of what that package was?

A I don't recall.

Q Who made the decision not to describe what the securities were that they were to receive?

A Well, I think this was the combined efforts of the people writing and editing the release.

Q What was their discussion, "Let's not put it in"?

A Oh, I don't recall anything like that at all.

Q Was their discussion to reflect what the agreement was you should put in what the securities were?

A No, Mr. Liman. I think that the purpose of the press release here, as I indicated earlier, was to publicize that information to the public which might be the subject of abuse by insiders and, therefore, the important matter here, as far as putting this press release together, was what is that which is most important, and that which is most important, of course, is what was going to be offered or what was the basis of the transaction to be offered to the public shareholders.

Q Did you think it would be misleading to the public to tell them that Bangor Punta warrants and a new convertible debenture were being given to the Piper family?

MR. RYAN: I object to the form of the question.

THE COURT: Overruled.

A Could you restate the question?

THE COURT: He wants to know whether if you

had decided that it was useful to make the statements that warrants and some convertible stock would be given, would that have misled the public, if you had decided to make such a statement.

A I don't think it would have misled the public.

Q At this time you had at Bangor Punta given consideration to using warrants and a convertible debenture in the public package, had you not? That can be answered yes or no, can't it?

A I don't think so.

Q Well, had you given any consideration at Bangor Punta to using warrants in the public package as of May 8?

A Many different things had been considered, including warrants.

Q But warrants were one of them?

A Well, there had been no definitive decision as to any particular security.

Q I didn't ask you whether there had been a decision. Were warrants one of the securities that were being considered at that time for the public package?

A I am sure they were.

Q Were warrants discussed at your executive

A Yes.

Q And you see that it says "he," meaning Mr. Piper and the Piper family, would strongly support the merger and would recommend it to all shareholders.

Is that correct? You saw that there?

A That's what it says.

Q And you approved the press release as it went out?

A Yes. The form --

Q You hesitated.

A The form of the press release, yes.

Q Well, when you say the "form," are you differentiating form from substance?

A You see, Mr. Liman, I think you are getting into an area here involving the management of the company, and of course I had no responsibilities in those areas, or authority.

Q But you were trying --

MR. LIMAN: Strike that.

Q When you were having all this talk about Texas Gulf, did you give consideration to stating in this press release that the Piper family stood to get extra consideration if the shareholders of Piper gave Bangor more than 50 per cent of the company?

MR. RYAN: Objection, your Honor. The assumption is incorrect.

THE COURT: Well, I will let the witness answer the question.

(To the witness: Did you consider it significant for the purposes of this particular press release to make any statement with respect to the additional amount that the Piper family might receive under certain circumstances?

A The answer is that we did not, because under no circumstances was the Piper family going to receive anything more than any other stockholder.

Q But they --

A And that's the important measuring device.

Q But they could receive less, is that correct?

A If we didn't get 50 per cent.

Q And were you not in fact told at the time of this agreement on May 8th that the Piper family package had a value under $80 a share, as it then stood?

A Well, I think that I sat in on meetings where that was stated, Mr. Liman. I think that's correct.

Q And in fact there is a proposed uncontested finding here -- 105 -- that Mr. [illegible]Laeri told Mr. Piper that the package that they were to get had a value

between $70 and $72 a share?

Does that figure ring a bell?

A That sounds about right.

Q And you knew that they were getting -- they were tendering or committing themselves to deliver to Bangor Punta 500,000 shares, correct?

A Yes.

Q So that, assuming the value of the securities did not rise in the interim, they stood to get almost five million dollars if more than 50 per cent of the shareholders of Piper tendered to Bangor Punta?

A But once again no more than any other shareholder.

Q But they stood to get an extra five million dollars, almost, am I correct?

A WEll, I won't compute the arithmetic but they did stand -- there was a possibility that they would get more.

Q More than $100,000?

A More than -- all right.

Q In the Harley-Davidson one, you put in bold-face print that last language that I read to you, didn't you?

A I don't know how you can attempt to draw a

comparison between the brokerage firm and the Pipers here, but so be it.

Q You didn't draw that comparison?

A No.

Q And when you put the recommendation of the Piper family in this press release, was that surplusage?

A I don't -- looking at the four corners of the thing, I don't -- I wouldn't have -- I wouldn't have been upset if it had been omitted, no.

Q Was it your PR department that suggested putting it in?

A Well, I don't have a -- I mean, I don't have an independent recollection of that paragraph, Mr. Liman.

Q Was it considered a favorable fact that the Piper family was supporting Bangor Punta's efforts?

A We certainly looked upon it that way. Certainly.

Q And did you not think that the public shareholders of Piper might look upon it that way?

A I am not sure that I thought that through, but I think that that would be a natural conclusion, Mr. Liman.

Q That is why you put it in the release, isn't it?

A Well, as I say, I don't recall the history of the

paragraph.

Q In the next paragraph of the release, which quotes Mr. --

A Wallace.

Q -- Wallace, that doesn't purport to paraphrase any provision of the agreement, is that correct?

A That's correct.

Q And the --

A Same sort of statement as the Piper statement.

Q And the remaining part of the release doesn't summarize any provision of the agreement, is that correct?

A That is correct. The remaining two paragraphs. That's correct.

Q So that in trying to capture the substance of this agreement is it fair to say that the only substance you tried to capture was the statement that the Piper family would receive an unspecified package and that the public shareholders would get a package of securities to be valued at $80 a share?

A In the opinion of First Boston.

Q In the opinion of First Boston?

A Yes.

Q And that is all you tried to capture?

A As I stated before, the principal thing that we were concerned about was to make certain that the public shareholders were particularly informed as to that part pertaining to them, that's right.

Q Were you afraid of insider trading if you didn't include the paragraphs about the Piper recommendation?

A No. As I say, I have to look at the four corners of the press release and ask myself does it -- is that a reasonable report based on Texas Gulf Sulphur.

To that extent I would say yes.

If there happens to be some surplusage, that is another question.

Q Well, you had read Texas Gulf Sulphur?

A Yes.

Q And did you interpret it as meaning that the release had to be balanced?

A Yes, I believe that's fair.

Q And you believe that if there was anything in the agreement, that you just couldn't get the favorable parts of the agreement in the release.

Am I correct? You couldn't put out just favorable news if you had unfavorable news --

A Oh, absolutely. Absolutely.

Q You testified thatone of the reasons thatyou felt it necessary to issue a press release then was that there was, to use your words, a roomful of people who now knew about it, am I correct?

A Yes.

Q Was there anybody in that room whom you didn't trust with confidential information?

A I don't think that you can look at the question of inside information on that basis at all.

Q Can you answer that question?

A There was no one in that room that I had any reason to distrust?

Q In fact, had you had negotiations with the Piper family on a form of agreement for at least a week?

A State that again, please?

Q Had you had negotiations wih the Piper family on the form of agreement for at least a week?

A Well, certainly either with the Piper family or Mr. Lurd and that group. I think that is a fair statement.

Q During that period did you see any notices in the press thatyou were having these negotiations?

A No, I don't recall any.

Q Do you recall whether in one of the drafts you

people whom you worked with in updating a registration statement not keeping a secret?

A Well, I have no recollection of this sort of thing at all.

Q Who was it you thought might leak this news?

A A couple of things, Mr. Liman: Number one --

Q Can you answer that?

A Yes, I think so. Human beings being what they are, anyone, first of all, can say, inadvertently, something that maybe he doesn't intend to say. That is one thing.

Secondly, as you recall, we filed a 13D with the SEC which is then public information to the world, which was to be filed within ten days after the transaction, and of course the whole world would have known about it then.

Q You mean on May 16, 1969 you filed your 13D?

A Yes.

Q You didn't file it on May 8, did you?

A Could have been filed then.

Q You didn't, did you?

A No. I think the 16th is right.

Q Are you saying that in your experience the

Q Was thatdiscussed when you were preparing the May 8 press release?

A The Chris-Craft package?

Q Yes, sir.

A Well, I certainly don't recall that it was. We were very busy that morning. Perhaps other people discussed it, but I don't remember that.

Q On May 8, when you issued this press release, did you know that Mr. Salgo had told Bay Securities Corporation thatyou were negotiating with the Piper family?

A I don't have knowledge of such conversations.

Q To this day you don't know that?

A Well, now, you know, since the case has been going on for two years, I have heard this said, yes, but I understand your question as putting me back in the frame of that time, isn't that correct?

Q Right. Well, Mr. Salgo wasn't one of the people whom you were afraid to trust, was he?

A No.

Q On May 8, on or before May 8, 1969, you had read rule 135, had you not?

A Yes.

Q Was it your practice also to read the Wall Street Journal?

A I usually saw the Wall Street Journal, Mr. Liman, unless I was so busy that I didn't see it on a particular day, but thatis my general practice.

Q Was it your practice to read stories on the acquisition efforts of other companies, particularly in contested situations?

A Oh, not unless -- if a particular story was of interest, yes, but I wouldn't generalize in that manner.

Q Did you read about the Northwest-Goodrich fight, in particular?

A At this time I don't recall whether I was aware of the Northwest-Goodrich fight. I certainly was aware of it.

Q Had you read about the fact that the SEC had accused Goodrich -- I am sorry, Northwest of gun jumping?

A I of course in the meantime have read an article on that. Whether I read it at thattime I can't recollect now.

Q Was the term gun jumping unfamiliar to you on May 8?

A I don't think it was an unfamiliar term, no.

Q With all this high-price legal talent in the room was there any discussion of rule 135 on May 8?

A I think as I testified one time before, I don't remember that anyone said "Now, let's all turn to Rule 135."

Certainly we were conditioned along that line of thinking, yes.

Q You say, as you testified before -- are you referring to your testimony in this action, the deposition?

A I think I have been deposed a couple of times.

Q You have only had that pleasure once by me. I will read to you from page 49 of the questions and answers:

"Q Was anything said on May 8 about whether the press release complied with the securities laws and the rules of the Securities and Exchange Commission?

"A I remember no discussion that it wasn't in compliance with the laws and rules.

"Q Do you remember any discussion that it was in compliance?

"A No, I don't -- I think as lawyers we considered that it was.

"Q Well, did you express that opinion to somebody?

"A No, I don't think that I went around and said 'I think this is in compliance with 135 or any other explicit rule.' No, that wouldn't be the nature of it."

Do you remember giving those answers to those questions?

A Yes. I think that is just about what my recollection is today too.

Q So there wasn't discussion of any particlar rule on that occasion? That is what you said?

A I think that is right. I don't think any rule was mentioned by number, or anything like that.

Q 10B5 wasn't even mentioned by number, was it?

A No, I don't think so.

Q You didn't call the SEC before you issued the release, did you?

A No, we did not.

Q Do you remember also being asked these questions in June of 1969, page 50:

"Q As you sit here today, have you come up with any or can you come up with any prior instance in which an announcement contained the value of an exchange offer of securities?"

There was an objection.

"A I just don't recall it right now. So I don't want to make any statement that would be misunderstood. I don't recall at the moment."

Then pages 53 and 54:

"Q In connection with any of these other offerings did Bangor Punta issue press releases?

"A Yes.

"Q Do you recall whether any of those press releases placed a value on the securities which were being offered?

"A I don't recall whether they did or not. My recollection would be that they did not. There might have been some which did, I am not sure."

Do you remember giving those answers to those questions?

A It sounds correct.

Q And that was your recollection at the time, am I correct?

A I think you have not read all of it because you will recall that after lunch we brought you in some others, didn't we?

Q At the time you testified before you searched your files this represented your honest recollection, am I correct?

A But I think the clear meaning of what I said is until we look, I don't remember at the moment.

Q Is it also true that on May 8 you had no

recollection -- strike that.

Was your recollection the same on May 8 as it was when you gave these answers to me?

A If you are asking me did one or more previous press releases pop into my mind, the answer is no, they did not, but at the same time if you are saying "Is your mind conditioned to what has transpired before and that the SEC has approved before," then of course that sort of thing is in the back of your mind.

Q I wasn't asking that, but you know the SEC doesn't approve anything, isn't that correct?

A All right, let's be precise --

Q I want you to be precise --

THE COURT: Well, that is what they say, whether it is correct or not.

MR. KUSHNER: Your Honor, that is what the statute says.

THE COURT: The statute says it and the SEC says it and the question is whether they do it. We are living in a world of people and things and practicalities and I know what the rules are and the obligations are, but when it comes down to living precisely within the four corners of what the statute says, there may be some variations. That doesn't mean that they are permitted

variations, and that is all I have in mind.

Q In your experience with the SEC did they ever use the words "We approve this"?

A Mr. Liman, I certainly did not mean to dwell on that word. All right?

Q Did they ever use the word "approve"?

MR. RYAN: I vote to strike the comment, your Honor.

MR. LIMAN: Withdrawn.

A Well, I can't recall that they ever did.

Q I was asking you whether -- I read you testimony which said, speaking of whether any of your prior releases had a valuation in them, and you said, "I don't recall whether they did or not. My recollection would be that they did not."

A Read on.

Q "There might have been some which did. I am not sure."

When you said your recollection would be that they did not, was that an honest statement?

A I certainly hope so.

Q And you wanted to check to see whether or not there were some that did, am I correct?

A Certainly.

Q On May 6 had you checked to see whether any of your prior releases had valuation?

A On the morning of May 8? No, I am sure we had not.

Q At the time I had examined you here, you had already been sued by Chris-Craft?

A That was June of '69?

Q Right.

A That would be correct.

Q And you had already entered into a consent decree with the SEC which arose out of the May 8 press release, am I correct?

A Correct.

Q And you know that one of the issues in the Chris-Craft case was related to your use of value in the May 8 release, am I correct?

A Yes, sir.

Q And it was your state of mind at that time after all of the charges that without checking your best recollection was that your press releases did not contain valuations?

A As I indicated, there may have been some.

Q But was it your best recollection when you gave that answer to me that your releases did not contain

valuation?

MR. RYAN: I object to the question. It is arguing with the witness. It has already been asked and answered three times.

THE COURT: He may answer it once more.

A Well, I guess the record speaks for itself, but let me just reemphasize one thing, that even though you may not be thinking in terms of a particular press release, your mind is conditioned as to what the SEC or any other regulatory agency has done in the past.

Q Had you read any announcement of value on the Chris-Craft release?

THE COURT: What is this, a contest as between two sets of law firms? Is that what the problem is here, as to how one does it and how somebody else does it?

MR. LIMAN: I don't think that is the issue.

THE COURT: You asked this witness three or four times now what his recollection was and he told you what his recollection was and he added on that he wanted to look it up. You asked him again and he told you he wanted to look it up and what are you proving by reiterating this?

MR. LIMAN: There is a claim and a proposed finding of good faith here, your Honor.

THE COURT: How many times do you want to ask

the same question to prove the same fact?

MR. LIMAN: If I was getting what I thought were responsive answers, your Honor, I would have stopped much earlier.

THE COURT: You mean if you were getting the answers you would like to receive.

MR. LIMAN: That is not what I meant, your Honor.

THE COURT: The witness is responding to your questions and I find no answers being issued in bad faith.

MR. LIMAN: I was not accusing him of bad faith, I was just saying he was not being responsive.

THE COURT: You call it to my attention any time you say it is not responsive, but I don't think it need to be dwelled upon with wearisome reiteration.

Q You testified that there came a time when you had a discussion with respect to the proposed rule 10B13, am I correct?

A Yes, sir.

Q Are you able to place the date of that?

A As I earlier stated, the best I can do as far as dates was prior to the time or at or about the time that the Fund of Funds shares of Piper stock were called to Mr. Salgo's attention.

Q When you read this release or rule of the SEC were you referring to release No. 8595 which is quoted in proposed finding 83, just for the record?

A This appears, Mr. Liman, to be an excerpt from that proposed rule.

Q Did I understand your testimony this morning to be that even though you didn't agree with this, you decided to tkae a "conservative position"?

A Yes, that is essentially what I said.

Q As part of this conservative position you told your executives not to solicit purchases over an exchange? Am I correct?

A Yes, that is in substance correct.

Q Were you referring to -- when you gave them that advice was the exception or an exception from rule 10B6 in your mind?

A Yes, as I recall, that's correct.

Q Was it the exception which reads "Provided, however, that this rule shall not prohibit solicited privately negotiated purchases each involving a substantial amount of such security effected neither on a securities exchange nor from or through a broker or dealer"?

A Yes, sir.

Q When you told your client not to solicit

purchases on the exchange, did you tell him not to buy stock from a broker or dealer?

A I am sure that we recited the whole rule to them.

Q And you are aware that Bangor Punta purchased approximately 40,000 shares from registered broker-dealers, am I correct?

A I know that now.

Q Well, you knew it at the time, didn't you?

A I don't believe I did.

Q Didn't you get rrpoets on the transactions that Bangor Punta was engaging in?

A Oh, I am sure that Mr. Wallace and Mr. Salgo told me about it -- told me about any purchases that they made, in a general way, but the ones to which you are referring I really had no connection with at all.

Q When you say you didn't participate in those purchases, you didn't mean to suggest you were unaware of them, did you?

A I am sure as purchases were made, they told me about them, but I wasn't involved in them, no.

Q Did you tell them not to buy from Bay or American securities?

A No, I don't recall ever saying that.

Q You testified this morning that on May 23 the SEC told you that they had told Chris-Craft that it couldn't make any cash purchases while it was in registration. Do you remember giving that testimony?

A Yes, sir.

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Q Is it fair to say that the SEC told you that both Chris-Craft and Piper had been instructed not to purchase Piper stock?

A Now, on that point, Mr. Liman, I don't have an independent recollection as to what they may have said about Piper at all, because my mind wouldn't have been keyed to that particular point, anyway.

Q Well, do you remember being asked these questions and giving these answers, beginning on page 97:

"Q Were you told by the SEC on May 23rd that they had instructed the Piper Corporation and the Piper management not to purchase shares of Piper while the Chris-Craft offer was pending?"

There was an objection.

"Q Can you answer that?

"A Mr. Liman, I think that it was a dual sort of thing. I think, as I recall, they told us both things as a package."

"Q Both Chris-Craft and Piper had been instructed not to purchase stock?

"A Yes. I think that is a fair resume."

Was that a truthful answer when given?

A Fine. I think probably that is a better recollection than I have now.

Q Now, directing your attention again --

THE WITNESS: Can you call a recess for a few minutes?

MR. LIMAN: The witness has asked me if he can have a recess, and that is perfectly agreeable, your Honor.

THE COURT: All right.

(Short recess.)

Q Mr. Flick, I direct your attention to the paragraph of the May 8th agreement that has been read before, that says, beginning on the date hereof, in substance, Bangor Punta would make its best efforts to acquire additional shares.

A Paragraph (e)?

Q Right.

A All right.

MR. LIMAN: That is Finding 66, your Honor.

Q Now, was there any discussion in your presence as to what efforts Bangor Punta should make to acquire additional shares other than making an exchange offer?

A I can't recall that. I assume that it probably meant purchases of stock.

Q And do you recall that in prior drafts of this agreement there were statements with respect to the fact that institutions held certain blocks of Piper stock? Do you recall that at all or should I show that --

A No. You would have to show that to me to refresh my recollection.

Q Well, do you recall drafts which had the following language -- and I am showing you a draft dated May 2, 1969, which I will have marked for identification --

MR. LIMAN: I think that is a finding already, your Honor.

Q (Continuing) It says, "Approximately 150,000 shares of Piper common stock are understood to be owned in substantial blocks by one or more investors for resale. Bangor Punta will use its best efforts either to purchase such shares or to obtain from such investors an option to purchase such shares at a future date."

Do you remember that language of this type in the drafts?

MR. ACKELL: It is Finding 86, your Honor.

A You know, I don't have an independent recollection of this draft, Mr. Liman, but I'm not -- I don't mean to say that I am disputing it. There it is. That's what it says.

Q Well, was there any discussion about efforts which Bangor Punta would make to acquire stock from institutional holders?

A I don't recall specifically. I just don't have a recollection on that.

Q Do you recall any discussion of who had or what institutions held Piper stock?

A Well, in a -- in a time frame of a month or so, perhaps there were discussions, but now whether there were discussions at the time that was being prepared I can't remember.

Q Well, when you say a month, you mean the prior month, the month prior to May 8th?

A Yes.

Q There was discussion that institutions held blocks?

A It seems to me that I heard somebody speculating that there might be such blocks.

Q Well, did the person who said that he was speculating-- or were you told Fund of Funds had some stock?

A Until I heard the words from Mr. Salgo, I cannot ever recall hearing anyone talk about Fund of Funds having some stock. I don't remember that at all.

Q Now, after you heard the words from Mr. Salgo, did you contact a Mr. Sayod in Nassau?

A We -- the Fund of Funds people had told us to go see Mr.Sayod.

Q Did you make the contact with him?

A I went to Nassau.

Q Well, before you went to Nassau, did you call him

and set up an appointment?

A Oh, certainly. I'm sure we communicated with him, telling him we were coming, yes.

Q Well, I am inquiring whether you were the person who did that. If you don't remember, Mr. Flick, you can say you don't remember.

A Well, you know, I don't remember.

Q But in any event, after he was contacted, you went to Nassau to see him?

A Correct.

Q And did you understand that Fund of Funds was under a decree that prevented it from transacting business in the United States?

A No. I did not know that at the time, Mr. Liman.

Q So that it was not your understanding when you went to Nassau that it was because Fund of Funds was under a decree with the SEC?

A No. I didn't know of a decree. There was some word said to the effect that they were not commissioned to do business in the United States or anything like that. But it was much later -- not much later; a little while later, when I learned of the so-called decree you are talking about.

Q And you went to Nassau, and you spoke to Mr. Sayod, and you made arrangements to buy the Fund of Funds block; is

New York time on July 29, 1969, subject to the extension of either or both of them by Bangor Punta for a further period or periods terminable by Bangor Punta on not less than 24 hours' notice delivered to the exchange agent."

Did you draft that language?

A Well, if you are talking of drafting it, I am sure I did not draft it. I am sure that this was worked on by John Martin of my staff, and other lawyers involved, if that is your question.

Q Would you look at that -- it is easier to read a provision than to hear me recite it.

A Yes.

(Pause)

THE WITNESS: All right, I have read it.

Q Did you understand this provision to mean that if you extended --

THE COURT: Why don't you ask him how he understood it effective July 29, 1969?

MR. LIMAN: I will ask him that. I adopt your Honor's question.

THE COURT: On July 29, 1969, sometime during the day, four or five o'clock, does that clause give you ther right, without modification of that clause, to extend the offer?

THE WITNESS: Yes, sir, it does.

Q Do you understand that what you would have to do, Mr. Flick, was to make sure that you would give at least 24 hours' notice of the termination of the offer? Is that the way you understand the 24-hour provision, Mr. Flick?

A Terminable on not less than 24 hours' notice.

THE COURT: Is the language "terminable on not less than 24 hours' notice" or extendable on 24 hours' notice?

THE WITNESS: Well, let me look at it again.

(Pause)

THE WITNESS: That the extended period would be terminable on 24 hours' notice.

THE COURT: Is that a clause which refers to an extension of the term or the termination of the term?

THE WITNESS: It refers to the extension, I believe, your Honor.

THE COURT: Is there anything in there that says when you can apply for an extension or how you can arrange it?

In short terms, could you have extended it on July 30th?

THE WITNESS: No, sir. I think it would have

expired at five o'clock on July 29th.

THE COURT: Was there anything in there, as you read it now, that indicates to you the method by which you can extend the term?

THE WITNESS: No, it does not appear to indicate that.

THE COURT: Well, it looks like I have been brought up in the wrong school of corporate draftsmanship.

* * *

* * *

moment.

Q Even though it was your testimony that there was an unpleasant situation between the Hutchins camp and the Salgo camp, and you never thought there would be a deal?

A Oh, that's exactly right. I never thought there would be a deal.

Q Was it your reaction that Salgo was beaten down after hearing of the September 9th decision of the board of directors of Bangor Punta?

A Oh, no. He still had another day.

I think that bears a comment. You have to understand both --

Q I would appreciate your direct response. Your counsel will ask you if there is anything you want to bring out.

A All right.

Q Have you any recollection at all of casting a vote as a director of Bangor Punta operations for the sale of railroad stock to Amoskeag for $5,000,000?

A No, I don't.

Q ~~Have~~ Had you formed any view, as a director of Bangor Punta, on the advisability of selling the railroad to Amoskeag for $5,000,000?

A When?

Q Prior to September 22, 1969.

A No. I think it was still pretty much up in the air. There was still a lot of facts to be gathered, a lot of factors to consider.

Q Let me ask you: did you rely on any studies in forming your view --

MR. KUSHNER: Strike that.

Q You did ultimately form a view, I take it, before October 2nd, as to whether the sale should go through, or is that wrong?

A I certainly -- certainly, I had an opinion, but there was no opportunity to do any voting on it.

Q You did form an opinion prior to the actual closing of the contract whether or not the sale of the railroad for $5,000,000 was a sound business judgment?

A I don't think that you can look at it quite that simply. By the time that the end of September had come around, I think that we had seen enough information that I certainly agreed with Mr. Salgo at that point that we should not sell that stock to Dumaine. Now, the other side of that coin, however, is that railroads, as you probably know, are not really a big commodity on the market, and so that the solution, as I say, of the railroad problem within Bangor Punta so that we didn't have the problem any more

I thought would be beneficial. So it was -- it was those types of considerations that you had to reflect on.

Q Mr. Flick, I think you have told me about on the one hand and on the other hand.

A Yes.

Q Did you form an opinion prior to the actual closing of the contract as to whether the sale to Amoskeag of the railroad for $5,000,000 was a good business judgment?

A I think it was beneficial to the corporation. I think there were other things that could have been more beneficial.

Q But you formed that opinion prior to October 2, 1969?

A Oh, yes.

Q Did you rely on any studies in forming that opinion?

A I think that I probably, in September, heard of the analyses that Mr. Priddle, Mr. Reames, Mr. Preiskel were making, that sort of information.

Q Have you got those documents with you, by the way?

A No; I do not.

Q Have you examined them prior to your testimony today?

A I certainly have seen a document or two, but in response to your question, I'm telling you what factors

went into my opinion.

Q Well, let's go at this separately, if we may. Did you mention Mr. Reames?

A Yes.

Q And what study did Mr. Reames perform?

A Well, Mr. Reames performed several studies. Mr. Reames, as you may recall, back in the spring, looked into a possible distribution of part of the Bangor and Aroostook stock as part of the dividend. Mr. Reames looked into a possible sale. Mr. Reames looked into a possible sale and leaseback. I'm sure if we dug out the records we would find that he looked into many different possibilities.

Q And have you got those memoranda of Mr. Reames with you?

A No; I do not.

Q Have you examined them before you testified today?

A Well, I believe that several of them either were introduced this morning or already are in the record.

Q Would you like to point to them ---

A Mr. Kushner.

Q I don't have Bangor Punta's exhibits. Perhaps we can get them, and you can point to them.

MR. RYAN: I hand Mr. Kushner Defendant's Exhibits W and V. If you wish anything else, please ask for it.

Q (Continuing) W and V are some of the studies by Mr. Reames you have been referring to?

A Yes, sir.

Q And V refers to a stock spin-off of part of the railroad stock to Bangor Punta shareholders; is that correct?

A Yes. Of course, it goes into a lot of detailed analysis, but that's the heading of that document.

Q And that was --

A That's V.

Q That was written up on March 30, 1969?

A Yes. That's correct.

Q Is that correct?

A That's the date of the memo.

Q Did you favor a stock spin-off of part of the railroad stock in September, 1969?

A Now, when?

Q September, 1969.

A Did I favor a spin-off? I don't think that that was a -- I don't think that that was any longer a possibility, in view of this fight that I have told you about.

Q Can you explain that in detail?

A What detail do you want me to explain?

Q I don't think your prior testimony refers to this, and if you can explain the reasons it was no longer a possi-

bility, please do.

A As I told you, by the time or at the time at the September 29th meeting, we had an extremely disagreeable situation, at which Mr. Hutchins and Mr. Robertson threatened to resign, and so, as a result of this, Mr. Salgo in effect relented and went along with them on the deal which he had opposed up to that very moment.

Q Well, prior to September 29th, did Mr. Salgo say he wanted a stock spin-off?

A Mr. Salgo considered many, many different alternatives, including keeping the railroad.

Q Throughout this period of May 21, 1969, to September 29, 1969; is that correct?

A During the period from October, 1967, all the way to October 2, 1969.

Q Please. I have the privilege of framing the questions. During that period, May 21, 1969, to September 29, 1969, did Mr. Salgo say that he insisted on a stock spin-off of the railroad stock or part of it to Bangor Punta shareholders?

A No. Not at all. Mr. Salgo does not operate in that way. Mr. Salgo likes to ascertain the facts, to look at all the possibilities.

Q Is it your testimony that Mr. Salgo will favor more than one possibility at once?

MR. RYAN: Could we have that read? I couldn't hear it.

THE COURT: He wants to know whether Mr. Salgo was ambidextrous.

MR. KUSHNER: Let me withdraw the question, please.

Q Let me ask what Mr. Salgo does after he looks at all the possibilities.

MR. RYAN: I object to the question, your Honor.

THE COURT: It is cross-examination.

A What does he do after he examines all the possibilities?

MR. KUSHNER: Let me withdraw that question, too, since you have been having difficulty with it.

Q Did Mr. Salgo, in September of 1969, say that he favored a stock spin-off?

A No. I can't recall that he did.

Q Now Exhibit W is a memorandum dated July 2, 1969, from Reames to you.

In there is it correct that Mr. Reames discusses a sale of assets of the railroad, a sale of the

right of way and the leasing of part of the rolling stock of the railroad, and a sale of the stock of the railroad and the lease of all the assets of the railroad?

He discusses those four subjects?

A Those are the four numbered paragraphs, plus a conclusion at the end.

Q Do you --

A Those are the headings of the numbered paragraphs.

Q Do you recall reading this July 2, 1969, memorandum shortly after July 2nd?

A I am sure -- I am certain that I did read it, yes.

Q And do you recall that it influenced your opinion as to whether and how to dispose of the railroad?

A No, it did not.

Q It did not?

A It just raised a multitude of questions.

Q And what were the questions it raised?

A Tax questions, accounting questions, profit-and-loss questions.

Q Now let's go down the list separately, if we may.

Do you recall when the questions, the tax questions

were answered, if at all?

A Tax questions?

Q Yes, sir.

A I am just trying to recall -- I would say that it was that Mr. Salgo had in his hands information from Mr. Priddle towards the end of September which, as I recall, was the -- one of the reasons which led up to the September 29th meeting.

Q And this is 1969, is it not?

A Yes.

Q All right.

When were the accounting questions settled?

A I really have -- I have no recollection of that.

Q What were the --

A Settled -- I don't know whether they were ever settled or not.

Q What were the accounting questions?

A Well, I am sure that the types of questions generally were the effect on assets, effect on profit and loss -- earnings, rather.

Those types of questions, sir, Mr. Kushner.

Q Well, Mr. Flick, weren't you aware, in the months of May, June and July, 1969, and even prior to that period,

Q Now can you supply us a time when that tax basis was ascertained, with a reasonable degree of certainty?

MR. RYAN: I object to the form of the question, your Honor.

THE COURT: Overruled.

A I am not the best one to testify on this but I understand that that question is still not straightened out.

Q Did you also testify on direct that at some time the tax basis to Bangor Punta of the railroad assets was not ascertained?

A My best recollection there -- and I don't have the facts, only the concept -- was that it was shortly before this meeting of September 29th that Mr. Priddle made a report to Mr. Salgo on this question.

Q When you say "shortly," are you talking in terms of a few days?

A Yes. That is my recollection: a few days.

Q Did you at any time, in September, become aware that Mr. Hutchins was leaving for Europe in early October of 1969 and wished the railroad sale to be completed by then?

A Mr. Hutchins?

Q Yes, sir.

A No. I don't remember where he was traveling.

Q Hutchins didn't tell you that?

A Well, I don't -- I just don't recall.

Q Incidentally, did you have any type of regular contact during the period May, 1969, through September, 1969?

A Regarding what?

Q Regarding the railroad negotiations.

A I would say, regularly, no, because I, frankly, had deputized Mr. Reames of the staff to continue the work, whatever work was going to be done on this matter, and so I usually got most of my information from Mr. Reames.

Q And this was during the entire period, May through September, 1969?

A Well, I don't want to foreclose that someone else didn't talk to me about it. Mr. Salgo, Mr. Wallace --

Q No. I am talking only about your contact with Hutchins, himself.

A Well, certainly, I saw Mr. Hutchins from time to time, but, as I say, I wasn't working regularly on the

joint requests of Mr. Hutchins and Saigo?

A Well, they were really undertaken at the direction of the board of directors.

Q Did you state on your direct examination that you had not asked Reames to do this prior to August because you never thought there would be a deal?

A I said there were a couple of reasons:

No. 1, we were busy with other things; and,

No. 2, you are right, I frankly didn't think there would be any deal.

Q What were the other things Reames was busy with prior to August, 1969?

A Reames was the tax counsel for the corporation and he had plenty of things to do.

Q So that you ranked this railroad matter low on the scale of priorities?

A Practically the bottom.

Q Even though the board of directors had directed such studies?

A Yes, because I was also aware of the facts of life within that corporation.

Q Did anyone ever suggest to you that waiting so long might result in Dumaine saying that he was no longer interested?

A I don't recall anyone saying that to me, no. I don't remember.

Q During the time that you were at Bangor Punta and prior to the Dumaine offer, had anyone ever offered five million dollars cash for the railroad?

THE WITNESS: Would you read the question, please?

(Question read.)

A Well, the only recollection I have now, and it is principally, you know, by reading documents after the fact, and I am sure that someone mentioned it to me, is that there was another gentleman was making an offer for the railroad.

Q This is prior to the Dumaine offer?

A The one I am referring to, as I recall, I think I would have heard about either just before or just after I went off or returned from military duty.

Q So this was subsequent to the Dumaine offer?

A It would be in August, September of 1969.

Q That would be subsequent to the Dumaine offer?

A Well, you can characterize Dumaine whatever way you want to. I am not joining in your characterization.

Q Is it your testimony that Mr. Dumaine didn't

make an offer for the railroad in 1969?

A I never talked to Mr. Dumaine. I heard the reports before the board, to which I have testified.

Q What do you recall hearing before the board? I am referring now to the May 21, 1969, meeting of the Bangor Punta board of directors.

A At the May 21st meeting, as I testified this morning, Mr. Dumaine -- excuse me, Mr. Hutchins -- made a report to the board of directors in which he set forth at some length possible alternatives to what should be done with the railroad.

One of them, of course, was to keep it.

Another possibility was to consolidate it with another railroad.

Another possibility was to sell it, and then in this connection I believe he mentioned his discussions with Mr. Dumaine.

At this point, as I have earlier testified, Mr. Salgo disagreed, started asking questions, and at about this point is when I was called then from the meeting.

Q Is it correct that at the Bangor Punta board meeting of May 21, 1969, Mr. Salgo suggested that Hutchins pursue a counter-proposal to offer Mr. Dumaine 51 per cent

of the stock of the railroad at book value and that he be given an option to purchase the remaining 49 per cent at a higher value so that Bangor Punta would come out with a total consideration of seven million dollars rather than the five million?

A That sounds correct.

Q The difference was two million dollars between Hutchins and Salgo on May 21, 1969, is that correct?

A No, I don't think that is so at all. Once again, this was an effort by Mr. Salgo to explore possible alternatives and you have to keep in mind that Mr. Salgo strongly disliked Mr. Dumaine and Mr. Dumaine strongly disliked Mr. Salgo, and Mr. Salgo really didn't want anything to do with Mr. Dumaine.

Now let's set the record clear on that.

Q Did Mr.Salgo state that his feelings toward Mr. Dumaine strongly affected his judgment as to this deal?

A I don't think that he said that in the Board, no.

Q Well, where do you get the impression from?

A Just knowing the situation from the past relationships.

THE COURT: Gentlemen, we are going to take a

five-minute recess while I talk to some other lawyers.

(Recess)

THE COURT: All right, Mr. Kushner.

BY MR. KUSHNER:

Q Mr. Flick, right before the recess you referred to ill will arising from some prior experience between Mr. Salgo and Mr. Dumaine.

What were those prior experiences?

A I don't know that I recall having heard specifics of it.

Q Is it correct that in September, 1969, Salgo was willing to agree to a sale of the assets to Amoskeag for five million dollars, referring to the railroad assets?

A I think Mr. Salgo realized that he had been put in a corner by Mr. Hutchins and Mr. Robertson and he didn't want a bad public situation during the time that we were at contest with Chris-Craft here, which certainly would occur, and so I just think that after having received Mr. Priddle's analysis, and that sort of thing, that he felt that a sale of assets under the circumstances, seemingly with the two choices here, certainly dollarwise made much more sense.

Q Is your answer to my previous question yes, or

shall I have it read?

MR. RYAN: I believe that answer was responsive, your Honor.

MR. KUSHNER: Your Honor, I can't fathom --

THE COURT: In September of 1969 was Salgo willing to sell the assets for five million dollars? Is that your question?

MR. KUSHNER: To Amoskeag.

A In the last week of September I think that was true.

Q In referring to this September 29th meeting in your direct testimony you referred to a threat by Hutchins and Robertson to resign.

Did they say that they regarded this matter as a matter of principle?

A Well, I think it was a combination. I think, as I recall, their statements were to the effect that the board on September 9th had approved the deal and they had then acted on that basis -- to that extent, to them, yes, I guess it was a question of principle.

Q Did they say that they would sooner resign than renege on the deal?

A I don't know that they used those words. I mean the statement was there that they were going to resign.

only wish to underscore that it is only part of it. Okay?

Q Do you think that the statement was taken by me unfairly out of context?

A No, I don't think you would be unfair, Mr. Kushner.

Q The statement that we are referring to is:

"He is a man of strong feeling and good business judgment."

Referring to Mr. Hutchins?

A Yes, that's correct.

Q Do you recall whether while you were at Bangor Punta any committee prior to the Hutchins committee had ever been appointed to look into the disposition of the railroad?

A I do not have knowledge on that. Let me state it another way:

I have no knowledge of such a committee.

Q Have you any recollection of being present at a meeting of the Bangor Punta board of directors on August 7, 1969?

A I am sure if you will show me those minutes I can make certain whether I was there or not.

MR. KUSHNER: May I have this document marked for

Q He didn't say he meant cash?

A I don't recall that he broke it down.

Q I see. The right price could have been in paper, too?

A Securities, you mean?

Q Yes.

A Oh, I'm guessing now, but I think that's a logical statement.

Q Whether it's logical or not, do you recall Mr. Salgo saying that at the August 7, 1969, meeting?

A No. I do not have an independent recollection of that.

Q And of course you have no independent recollection of anything Mr. Salgo or anyone else said at that meeting of August 7, 1969?

I will limit the question: regarding the railroad what anyone said regarding the railroad at the Bangor Punta board of directors meeting of August 7, 1969.

A Well, at this late date I would have to let the record speak for itself, Mr. Kushner.

Q You did write the record, though, didn't you?

A I wrote these minutes, correct.

Q Did you testify on your direct examination that you received Exhibit 2, the letter from Mr. Hutchins to

Mr. Dumains dated May 27, 1969, as a matter of information?

A I believe I testified that my best recollection was that at some time after the fact I received -- I saw this. Right.

Q After the fact refers to --

A After the date.

Q After May 27, 1969?

A Yes.

Q Did you ask Mr. Hutchins any questions about that letter?

A I don't recall that I did.

Q Did you ask Mr. Robertson any questions about that letter?

A Gee, I don't remember that I asked Mr. Robertson anything, no.

Q Do you recall Mr. Robertson speaking to you before the letter was delivered by Mr. Hutchins to Mr. Dumaine, about this letter?

A Well, he may have, but I have no independent recollection of it.

Q When you saw this letter, Exhibit 2, did you know whether or not it had been signed?

A Well, I don't recall. This one you handed me is not signed. I don't -- I didn't -- I can't remember whether

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I knew that or not, at that time.

Q At any subsequent time, did you know it?

A Well, I expect through in the course of this litigation, Mr. Kushner, that this was called to my attention some time, surely.

Q We are talking about the period subsequent to October 2, 1969.

A Subsequent to October 2?

Q No. When you say some time in the course of this litigation, you are referring to a period subsequent to October 2, 1969, are you not?

A Oh, no. Chris-Craft started litigation much before that.

Q Are you able to recall the first time you did find out?

A No. I don't really know when I did.

Q Do you recall that Bangor Punta's registration statement for the general exchange offer for Piper's shares became effective on July 18, 1969?

A I do.

Q And prior to July 18, 1969, did you discuss with Mr. Hutchins the status of his dealings with Mr. Dranine concerning the railroad?

A I don't recall that I had any discussions with him.

Q And prior to July 18, 1969, did you discuss with Mr. Robertson the status of the dealings with Mr. Dunaine regarding the railroad?

A Once again, I just don't recall. You know, as you probably know, Mr. Robertson spent a good deal of time in Bangor, Maine.

Q Mr. Flick, you have referred on a number of occasions to the Hutchins camp and the Salgo camp. Is it correct that Mr. Robertson was in the Hutchins camp?

A Ultimately.

Q When did you first find out he was in the Hutchins camp?

A Mr. Robertson?

Q Yes, sir.

A Well, I think it was certainly brought home to me on September 29th. Prior to that time, I really hadn't looked into it.

Q And you hadn't been informed, one way or the other?

A No. I sure didn't ask anybody whose camp he was in.

Q So that you didn't know who was in Salgo's camp and who was in Hutchins' camp, except for the September 29th meeting; isn't that correct?

A Oh, I think that a person has to know how some people are leaning on any particular subject.

Q Whom did you know to be leaning towards the Salgo camp?

A Well, I think there were a good many people agreed with Mr. Salgo that we didn't know the facts; the facts had to be developed; and certainly there were a good many people, I believe, in that area, and certainly Mr. Wallace was of that mind; Mr. Salgo was of that mind; and certainly so was I.

Q And this was when? As of what time?

A Well, all during this period we are talking about.

Q Up to September 29, 1969? Subsequent to that?

A Subsequent to September 29, 1969?

Q I am trying to find out what you know.

A Well, I think the whole matter -- I think the whole matter became resolved between September 29th and October 1st and 2nd.

Q So that your references were up to September 29, 1969?

A Well, yes, because the thing closed on October 2nd.

Q And you and Wallace, you say, were leaning towards the Salgo camp?

A We certainly were looking for the facts, yes, and in that respect we agreed with Mr. Salgo.

Q You agreed with him that the sale of railroad stock

to Mr. Dumaine should not go through?

A We agreed that all the alternatives should be explored.

Q And what were these alternatives?

A Well, I have already named some of them. Do you want me to name them again?

Q Yes. Please do.

A All right. Spin-offs, use of the dividend, possible consolidation with another railroad, sale and lease-back, keep the railroad as it is, go ahead with it. Those are some of the possibilities.

Q As of September 29, 1969, what further exploration was necessary, in your opinion, regarding each of these alternatives?

A Oh, I don't think that we had explored some of them very much at all.

Q Which ones are you referring to?

A Well, I don't think that we had talked much about the spin-off. I, of course, didn't know of discussions with any -- discussions at that time with any other railroads, that type of thing.

Q Hadn't Mr. Hutchins told you about that at the May 21st meeting?

A Mr. Hutchins told us what his opinion was.

Q And you thought that further inquiry was necessary?

A I certainly did.

Q So if it was up to you, the railroad sale of the stock to Amoskeag would not have been completed on October 2, 1969?

A I was no longer in that position. I was a junior member of the management, so to speak, and this sort of decision was -- had already been approved by the board of directors on September 9th, and so, unless a person in Mr. Saigo's or Mr. Wallace's position stopped the transaction, it wouldn't have gotten stopped.

Q Mr. Flick, prior to July 18, 1969, did you inquire of the Bangor Punta directors concerning their views on selling the railroad for $5,000,000?

A I personally did not poll the directors.

Q You did not?

A I wouldn't, in my position.

Q Yes, sir. Have you any --

MR. KUSHNER: Strike that, please.

Q Did you ever receive information as to the reason Mr. Hutchins was chosen to head this committee to look into the railroad?

A Oh, I am sure that in -- once again in reading material after the fact here, that this sort of information has come to my attention, but if you are asking me in that

MR. KUSHNER: If you want to put your question as mine, I will be glad to --

THE COURT: All I want to know is, are you asking at what point information becomes material, and, if you are, I will decide that. But you go on with the next question.

MR. KUSHNER: All right.

Q Mr. Flick, on July 18, 1969, was it your view that there had to be a resolution by the Bangor Punta board of directors authorizing the sale of the railroad to Amoskeag for $5,000,000 before any disclosure was required in Bangor Punta's registration statement?

A I would say, in view of the very strict restrictions which the board of directors had laid down at 5/21/69, that the board of directors did in fact, or the executive committee would have had to make such an approval.

Q By formal resolution at meeting of the board?

A I don't care whether it was resolution or consensus or what?

Q Now, incidentally, referring to minutes of the meeting of May 21, 1969 --

MR. KUSHNER: Your Honor, that is finding No. 12, in Exhibit No. 21, at pages 17 and 18.

Q (Continuing) -- and referring you specifically to the very conclusion of the section under "Railroad" -- it starts here (indicating) -- is it not a fact that the board of directors authorized approval of the railroad sale, either by itself or by the executive committee?

MR. RYAN: Please read that question.

(Question read.)

THE COURT: I am not going to take the witness' answer until there is read into the record what the minutes are supposed to say, according to this agreed finding, and then you are going to ask the question on that basis.

Otherwise we will get into a semantic battle.

What is the paragraph of the agreed finding that you want to read into the record?

MR. KUSHNER: Your Honor, I want to read the following paragraph. It is the very last paragraph on

page 18 of Exhibit 21, and it states:

"After considerable discussion, it was the consensus of the board that Mr. Hutchins should attempt to negotiate on the 49/51 per cent basis suggested by Mr. Salgo but that he has the authority to negotiate on the basis of a sale of 100 per cent of the Bangor & Aroostock Railroad, subject to further investigation of accounting and tax ramifications of such a transaction and approval by the board of directors or the executive committee of the board of directors."

THE COURT: What is the question?

MR. KUSHNER: Would the reporter reread it.

THE COURT: What is the question that you are putting on the basis of this quoted material?

MR. KUSHNER: Isn't it a fact that the board of directors at the May 21st meeting stated that approval of the sale of the railroad could be done either by the board itself or by the executive committee of the board?

THE WITNESS: The answer to your question is absolutely not.

Q The board did not confer such authorization at the May 21st meeting?

A Not at all because it says this is subject to two very material qualifications:

No. 1, subject to further investigation of accounting and tax ramifications of such a transaction, and, No. 2, approval by the board of directors or the executive committee of the board of directors -- meaning, no deal.

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Q Youare referring to the next board meeting which would record approval of the prior meeting's minutes?

A Yes, only the board could approve board minutes and so on.

Q Is it correct that Mr. Reames hadlimited, if any, participation in the preparation of Bangor Punta's registration statement for the general exchange offer for Piper shares?

A I think that is a correct statement, Mr. Kushner.

Q Would he have anything to do with preparations in the Chris-Craft litigation during the period May 1969 to September 1969?

A I doubt that he did.

Q You testified to a meeting sometime in July 1969 with Mr. Arning and others.

Do you recall that testimony?

A I do.

Q At that meeting did you show Mr. Arning a copy of Exhibit 2, the May 27, 1969 letter from Mr. Hutchins to Mr. Dumaine?

A I don't recall.

Q Do you recall what you showed Mr.Arning in the

contracts and other business transactions all the time in which you keep them confidential.

Q You did sign the registration statement which Bangor Punta filed on July 18, 1969, did you not?

A I'm sure I did.

THE COURT: That complete your examination?

MR. KUSHNER: Yes, your Honor.

THE COURT: Any other questions?

MR. RYAN: No questions.

THE COURT: I would like to ask a few.

EXAMINATION BY

THE COURT:

Q To your knowledge, was Mr. Hutchins authorized by the board of directors to represent to Mr. Dumaine or anyone else prior to September 9 that the railroad stock would be sold by Bangor Punta?

A My opinion, he did not have that authority.

Q To your knowledge, did Mr. Hutchins have any interests outside of Bangor Punta in the area served by the Bangor and Aroostook Railroad in Maine?

A I'm sorry, sir, but could you repeat that?

Q Was he Maine oriented? Did he have assets in Maine?

A Yes, sir, he did.

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLANDT 7-4580

Q Were those assets served in any way by the Bangor and Aroostook Railroad, to your knowledge?

A Your Honor, I don't have enough knowledge to know that.

Q Did Mr. Hutchins have a special interest in seeing to it that the railroad kept running as a railroad rather than to be sold for the best possible price available for the assets, to your knowledge?

A I can't answer that because I don't know the nature of his business that well.

Q Do you know of any of the businesses that he was engaged in in the State of Maine or properties that he owned?

A I understood at that time he was the head of the Dead River Company, but, your Honor, I never knew much about that company.

Q When did Bangor Punta for the first time decide that it would sell the railroad stock?

A I think that that -- I think that that was decided right on the spot in New England on the date that it was closed.

Q What was the date?

A October 1st or 2nd, your Honor.

Q Did Bangor Punta postpone the sale of the

railroad or its stock to avoid disclosure of such a transaction in its registration statement and prospectus filed on July 18, 1969?

A No, sir.

Q Did the lawyers, including yourself, or any one of them, for Bangor Punta or serving Bangor Punta advise Bangor Punta or its directors not to deal with Dumaine or anybody else while there was a registration statement under consideration by the SEC?

A I certainly did not and I don't know of anyone else who did.

Q Would there have been any difficulty amending the registration statement pending in July or August 1969 to include a reference to a matter not already covered in the filings?

A Now, what time frame are you talking about?

Q At or about the time of the filing or shortly thereafter.

A No, there would have been no difficulty.

Q And from your experience in connection with such an amendment, what would be the time lag involved in getting an amendment with expedited treatment requested?

A Having your people, in effect, work around the clock and asking for expedited treatment, I'm sure that you

are talking a matter of a few days; working days, that is.

THE COURT: Does anybody else have any questions?

CROSS-EXAMINATION

BY MR.LIMAN:

Q Did you ever consider selling the railroad for just the scrap iron?

A I never heard that discussed, Mr. Liman.

Q All of the plans presumed a continuation of the railroad as a going railroad, isn't that correct?

A I never thought about it that way, Mr. Liman.

Q Did you ever think about it as being sold for something other than as a railroad which would be operating?

A I did not think about that.

Q You never heard anybody else mention selling it for scrap value?

A Well, I don't recall such statements.

Q As you sit here today?

A As I sit here today.

MR.LIMAN: No further questions.

THE COURT: Mr. Liman, are you mindful of the testimony given by the witness Dumaine on the business about selling the assets?

CHRIS-CRAFT INDUSTRIES, INC.
vs. 69 Civ 2227
PIPER AIRCRAFT CORPORATION, et al

BANGOR PUNTA CORPORATION
vs. 69 Civ 2354
CHRIS-CRAFT INDUSTRIES, INC.

S.E.C. 70 Civ 3940
vs.
BANGOR PUNTA CORPORATION

New York, March 15, 1971;
12.00 o'clock.

Trial resumed.

- -

D A V I D W. W A L L A C E, called as a witness on behalf of Defendant Bangor Punta Corporation, being first duly sworn, testified as follows:

THE WITNESS: I reside at Deer Park, Greenwich, Connecticut.

DIRECT EXAMINATION

BY MR. RYAN:

Q Mr. Wallace, could you please relate to us your ducation?

A I graduated from Yale University, School of Engineering, and graduated from Harvard Law School.

Q And are you admitted to the Bar?

A Yes, sir.

Q Will you please relate to us your employment background since law school?

A When I graduated from law school I was employed by the New York law firm of White & Case. I left White & Case in 1945 to become general counsel of Alleghany Corporation. I became executive vice-president of Alleghany Corporation. I left Alleghany Corporation in 1959, became employed by the then AMK Corporation in 1960. The name was later changed to United Brands Corporation. I left there as -- I was chairman of the executive committee and executive vice-president. I left there and in 1969 became president of Bangor Punta Corporation and chief operating officer. In, I think it was, mid-1969, I became chief executive of Bangor Punta.

Q And are you still chief executive of Bangor Punta Corporation?

A I am.

Q Now, Mr. Wallace, I direct your attention to May 8, 1969. On that date did you attend a meeting at the offices of the Chadbourne firm in New York?

A Yes: I did.

Q Could you please relate to us what occurred at

that meeting?

A We met at the Chadbourne firm with a representative of First Boston Corporation, various members of the Piper family, various -- an assortment of lawyers representing all interested parties, and we proceeded to work on the drafting of an agreement between the Piper family and Bangor Punta Corporation whereby the Piper family would sell approximately 501,000 shares of Piper Aircraft stock to Bangor Punta.

Q Do you recall anything further which occurred at that meeting?

A Well, we concluded the agreement, and I believe it was signed at that time.

Q Were there any discussions concerning the consideration portions of the agreement?

A Well, yes. I met the evening before with Mr. Laeri of First Boston specifically to discuss the consideration portions, and then -- and that was when I thought we had agreed on a proposed package for the Piper family, and I then went, the next day, to the offices of the Chadbourne firm, and at that time the family expressed a desire to see the package increased somewhat, and I believe that we increased the number of warrants from 2 to 2.2 warrants per share of Piper stock.

Q Now, was there any further discussions at that

meeting than the discussions concerning the preparation of the final agreement?

A Well, when Mr. Laeri and I met the evening before at my home -- I then lived in New York City -- I recognized that we would probably have to put out some sort of press release concerning an agreement between the Pipers and myself -- and Bangor Punta -- excuse me -- and I called Mr. Jack Milne, who was then our vice-president of public relations, and told him to be at my office first thing in the morning, because I believed we would be having an announcement to make concerning Piper.

I then met at the office before going down to the Chadbourne firm with Mr. Milne and Mr. Flick, who was our general counsel, and we had, I think, made a draft -- really, Mr. Milne in cooperation with Mr. Flick and myself -- of a press release. This draft was then discussed at this meeting at Chadbourne Park and gone over, of course, not only by our lawyers but the lawyers from the Pipers and First Boston people and so forth.

Q And do you know whether that press release was issued?

A Yes; it was issued.

Q You authorized its issuance, didn't you?

A Certainly.

Q Now, do you recall having any conversations at about the time of the execution of the agreement between Bangor Punta and the Piper family concerning a corporation or a company known as Bay Securities Corporation?

A At what time, sir?

Q Subsequent to the execution of the Piper family's agreement. That would be after May 8th.

A Discussions with whom?

Q Anybody.

A Yes; I do recall.

Q Do you recall when you first had those discussions?

A It was some time subsequent to May 8th and would have to be before May 23rd, when we visited the SEC. So I would say it would be some time early in May but after May 8th.

Q With whom did you have such discussions?

A Well, I believe at one time it was a Mr. Morey. It may have been someone else, but I believe right now, my recollection right now is that Mr. Morey called and offered us a block of Piper securities, and I believe I discussed it with Mr. Flick and then bought it.

Q And did you ever have any discussions with Mr. Salgo concerning Bay Securities Corporation?

A Well, I'm sure I told Mr. Salgo about the purchase.

That would be my normal habit.

Q Did you ever have any conversations at or about that time with Mr. Salgo concerning ISI Corporation?

A Well, at some time around that time I had some discussions with Mr. Salgo about ISI, because ISI was involved in a transaction that we were engaged in whereby Bangor Punta was to buy the Crossman Arms Company. They manufacture air rifles and carbondioxide guns and are located in up-State New York. And in connection with that we were issuing a new preferred stock, and to assure the seller of a value in the new preferred I believe there was some kind of put and call arrangement. Now, that's subject to my being refreshed. And Mr. Salgo had visited with ISI and made arrangements for ISI to give a put to the -- to Mr. Philip Hahn, who was the seller and had a call, also, I think, on the stock, and the negotiations with Crossman had been going on for some time, and they were having -- it was a considerably rocky road, and I was concerned really whether or not there was still a do[illegible]e deal here vis-a-vis not only Crossman but ISI, and I think I spoke to Mr. Salgo about this whole situation.

Q Do you know whether there was any relationship between ISI Corporation and Bay Securities Corporation?

A Do I now know?

Q Did you know at that time?

A I think that -- my recollection is that I knew there was some connection. I subsequently learned there were a wholly-owned subsidiary.

Q Now, you testified you had a conversation with a Mr. Morey, and he offered you some securities. You were referring to Piper securities; is that correct?

A Yes.

Q Did you have any further conversations with Mr. Morey or any other representative of Bay Securities concerning Piper securities?

A I believe we bought either two or three blocks of Piper securities from Bay Securities. Those transactions may have been conducted by me, they may have been conducted by Mr. Flick. I am not sure. In any event, I know we did have a series of transactions.

Q During the period immediately following the execution of the May 8th agreement, did you have any conversations with any representative of American Securities Corporation?

A Yes, I did.

Q Do you recall who you had that conversation with?

A No, I don't.

Q Do you recall approximately when you had the conversation?

A Again, I would put it in the same frame I did the Bay Securities transactions.

Q Would you tell us the substance of those discussions?

A Similar -- I think it was a block of 20,000 shares offered to us by American Securities. Mr. Flick had given me some guidelines as to what we could and could not do and I think I talked to him and he felt it fitted within those

guidelines and we bought it.

Q Did you know at that time what business American Securities was engaged in?

A I believe American Securities principally represented the investments of the Rosenwald family.

Q Do you recall having any discussions subsequent to execution of the May 8th agreement concerning any securities, Piper securities, owned by Fund of Funds'

A Yes, I do.

Q Do you recall who you had those discussions with?

A Well, at various points, with Mr. Salgo and with Mr. Flick.

Q Do you recall approximately when you had those discussions?

A Well, right after the signing of the agreement with the Piper family we had an executive meeting of Bangor Punta Corporation, an internal meeting, on the securities, and that was held out at Phoenix, Arizona, and Mr. Salgo left that meeting early, I think on a Sunday morning, and Mr. Flick was then working on the Piper transaction, and so they left the meeting early and I stayed on and I think it was that Monday morning Mr. Salgo called me and said that a Mr. Friedman had called him and asked if we had an interest in acquiring the Fund of Funds block of Piper stock, and

Mr. Salgo asked me how I felt, and I said I thought we should do it.

Q Did you have any further discussions concerning these shares?

A I had told Mr. Salgo I wanted Mr. Flick to handle it because of the fact that he was most knowledgeable of both the background and of the law, and so forth, and I believe that the negotiations were then turned over to Mr. Flick.

Q Did you have any conversations with Mr. Flick concerning these shares, if you recall?

A Well, I probably had some in the United States, but I recall very clearly a conversation I had about midnight when Mr. Flick was down in Nassau negotiating with these people.

Q What was the substance of that discussion?

A Mr. Flick called me to say that he had pretty well traded out a deal with the Fund of Funds but now they were asking, as kind of a sweetener, that we throw in the leasehold that Bangor Punta held at 405 Park Avenue. You see, at this point it had been publicly announced we were moving our corporate headquarters from New York City to Connecticut and at this time the real estate market in New York was such that that lease was a very advantageous lease and they were seeking to have us transfer it at no cost to them to IOS,

or somebody like that, and I told Mr. Flick that I was not going to be subject to that kind of nonsense and to forget the deal and if that was a condition of the deal, to pack his bag and come home and not do it.

Subsequently Mr. Flick called me and said they had waived that requirement and he had closed the deal.

Q Do you recall any further conversations concerning the Fund of Funds shares?

A Mr. Cornfeld called me on the telephone, and I believe that would be the day after Mr. Flick had been down to Nassau, and he was on his way home and Mr. Cornfeld called me up, he was in New York, and he said I had taken unfair advantage of his people in Nassau, that he also had understood that this lease should go with the thing and that his people had somehow dropped the ball.

I said I had never heard of this until Mr. Flick had called me up and if he didn't deliver the shares, I would sue him.

Q Do you recall any further discussions?

A About the Fund of Funds?

Q Yes.

A Well, I heard a lot in the office about it. I was not directly concerned, but evidently there was a lot of technical problems in closing it, because, you know, for some

reason they would only negotiate in Nassau and would only accept payment in London and Geneva and there was a lot of arranging between our banks, and so forth and so on, and I heard all of that.

Q I will direct your attention to around June or July of 1969. During that period of time do you recall having any discussions with anyone at Bangor Punta concerning purchases of Bangor Punta securities by John Hancock Company?

A There was a time when Mr. Milne came to me, and I can't tell you when it was, but I would say some time in that June or July period, and said that on the transfer sheets he had noticed that the nominee of John Hancock had bought a considerable amount of Bangor Punta securities, and I believe it was the common stock.

Q When you say transfer sheets, what are you referring to?

A Well, you know, the transfer agent of a company will send, on a weekly basis, or something, sheets of the people that transferred their shares out --

Q The stockholders lists?

A Yes.

THE COURT: It is not the stockholders lists, it is the current transfers.

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cerned because I felt that the outlook, the economic outlook, I am talking about the national economic outlook, was worsening considerably and I felt that some of our operations could be affected by it. We already had some areas of problem. For instance, in our textile operations we had two years of relatively flat earnings --

MR. LIMAN: Is the witness relating discussions --

THE WITNESS: These are discussions I had with my board -- not with my board, but with the directors at this November meeting.

A I felt that in view of these factors, tight money, for instance, another area -- we were a highly-borrowed, highly-leverage company, and all indicated we should give some thought to selling some of our operations and I felt also if we were in a difficult economic period the chances of our realizing the full value -- not the full value, but the full carrying charge of some of these operations might be questionable and there was a great discussion and I think out of that we wrote down some of our assets, mainly writing off the goodwill, as I recall it.

Q I am going to direct your attention back to early 1969. Do you recall having any discussions during that period of time, early 1969, with any one of your fellow

executives at Bangor Punta concerning a possible disposition of the Bangor Punta interest in the Bangor and Aroostook Railroad?

A You want what happened in early 1969?

Q That's right.

A In early 1969 I believe I had some conversations with Mr. Salgo, possibly with Mr. Flick, but certainly with Mr. Salgo, concerning our reaching a solution to the Bangor and Aroostook problem, which was really a continuation of discussions held in 1968 and 1967.

Q Did participate in any previous discussions, that is, discussions previous to 1969, concerning a possible disposition of Bangon Punta's interest in the B.A.R.?

A I can't recall exactly the dates on it, but I recall two discussions. The first discussion would have been an idea to put the Bangor and Aroostook, the Maine Central, and the Boston and Maine Railroads into one package and have a New England railroad system -- it might have been a New England railroad disaster -- and the other discussion we had was, I think, in mid-1968, when discussions were had with Mr. Dumaine and also with a man from President Nixon's old law firm, Mudge, Stern, who was then representing the Delaware & Hudson, about Bangon Punta Corporation acquiring the Delaware & Hudson Corporation, which in turn owned the

Delaware & Hudson Railroad, and at that time the idea of putting the Delaware & Hudson and the Bangor and Aroostook together was discussed.

THE COURT: You didn't say what year you had this idea or talked about putting the three railroads together into one system.

THE WITNESS: It wasn't my idea, but it was discussed, your Honor -- I became employed by Bangor in mid-May, 1967, and it would have to be some time after that. As I recollect it, incidentally, there was a story on this in the Wall Street Journal. That might help pinpoint it.

Q Let's go back to the conversations you testified to before with Mr. Salgo. Would you please tell us to the best of your recollection the substance of these discussions you had with Mr. Salgo in early 1969. Can you fix the date first?

A I am afraid I can't, unless you have some way of helping me on it. Well, it would be 1969, certainly in the January-February area, would be my guess.

Q Would you tell us what those discussions were?

A Those discussions pertained to the possible either spinoff or rights offering to the stockholders of Bangor Punta of the railroad company, and we discussed it, I think, maybe on several occasions but nothing really came of it.

Q Subsequent to those discussions do you recall what next happened at Bangor Punta concerning a possible disposition of the B.A.R.?

A I think it was a directors meeting -- whether executive or board, I am never sure -- on April 1, where Mr. Salgo raised the question of the possible spinoff, or sale, to Bangor Punta Corporation stockholders of the railroad and a very heated discussion arose between Mr. Salgo on the one hand and Mr. Curtis Hutchins, a member of the board, on the other.

Q This is the April 1st meeting where Mr. Hutchins had this discussion?

A No, excuse me. Mr. Hutchins wasn't there, the April 1 meeting. There was a discussion of -- strike that. My recollection was bad. Mr. Hutchins was out of the country then. A committee was appointed to look into this whole question and the reason I might have said Mr. Hutchins is because I believe at this meeting we appointed Mr. Hutchins to the committee, along with Mr. ~~Siel~~ Seal and Mr. Stone.

Q Did you attend that directors meeting?

A Yes, I did.

Q What next occurred, to your recollection, concerning the B.A.R.?

A The next thing that I could recall would be a May 21 meeting. There had been some discussions, incidentally,

in the office, in the interim, on this whole spinoff idea, and so forth and so on, and I am sure that at some point someone, probably Mr. Robertson, briefed Mr. Hutchins, on his return, that he was on this committee, but at the May 21 meeting Mr. Hutchins raised the question of selling the railroad to Mr. Dumaine, more correctly stated to Amoskeag Corporation, a corporation controlled by Mr. Dumaine, and it was at that meeting this heated discussion developed between Mr. Hutchins and Mr. Salgo which I incorrectly placed at the April 1 meeting, but it was at the May 21 meeting.

Q Will you tell us further your recollection of what was stated at the May 21 meeting?

A Well, Mr. Salgo has a deep and abiding aversion to Mr. Dumaine growing out of a number of transactions, some of which I am familiar with, some of which I am not --

MR. LIMAN: Did he state that?

THE WITNESS: Yes, very vehemently --

THE COURT: Please, don't accept any interruptions. You will be cross-examined extensively.

Q Will you continue on?

A I am sorry, I sort of lost the thread of what I was saying --

THE COURT: You were at the point where there was

a deep and abiding difference of opinion because of some background.

A Yes. Mr. Salgo and Mr. Dumaine are not what I would call admirers of each other --

Q Can you tell us what else you recall occurred at that meeting?

A Mr. Hutchins' proposal, I would say, could fairly be characterized as a surprise. I may have had some knowledge of that before the meeting, but it certainly was a surprising turn of events because the committee had been originally constituted to study the proposals on April 1. In any event, Mr. Salgo stated at the meeting that was obvious to him that we had not developed sufficient information to make an intelligent decision on the sale of the railroad and a great deal of accounting and legal work had to be done and Mr. Hutchins' committee should make further investigations and study.

Q Do you recall whether anything further occurred at that meeting concerning the B.A.R.?

A No, I do not.

Q What next occurred, to the best of your recollection, concerning the possible disposition of the B.A.R.?

A As I recollect, Mr. Flick pretty much took over as far as the corporation was concerned and assigned some of

his people to study this, but, in the meantime, we had a great deal of pressure on us: this Crossman Arms transaction I referred to before was becoming more and more sticky and a great deal of time was being spent on it because we had decided we did not want to acquire Crossman Arms and there were some problems, as I recollect, concerning Manati & Francisco, and I recollect also, of course, the whole Piper situation was taking a great deal of my personal time.

Q Do you recall attending any meeting, Mr. Wallace?

A Yes. I recall several meetings subsequent to this directors meeting. I recall being at a meeting in which Mr. Salgo had brought in Mr. Hans Frank, an attorney here in New York, in whom Mr. Salgo has a great deal of confidence, as do I, and, in effect, charging Mr. Frank with investigating the tax aspects of any disposal program for the B.A.R. I would say this happened either in late May or early June. Then there came a time, I believe, when Mr. Hutchins and Mr. Salgo, Mr. Flick and myself, met and I think we talked on the telephone with Mr. ~~Wheeler~~ Wieler, who was the partner of Peat, Marwick & Mitchell and in charge of our accounts, and determined we had too much of a work load at the present time to conduct further studies and investigations because it involved the legal people going to the

ICC, up to Maine, and the tax and accounting people really going back in the books and records of the B.A.R. back to the turn of the century, I guess.

Q Do you recall approximately when that meeting took place, the meeting with Mr. Hutchins, if you can?

A Sometime in June, I would believe.

Q Now what next occurred concerning the possible disposition of the BAR, to the best of your recollection?

A I am just thinking right now.

Well, I know that it was tabled then for quite a long period, when nothing was being done on it, and then I believe that sometime in the latter part of August of 1969 Mr. Flick told me that Mr. Hutchins had been urging him to get going on these studies.

So I said to John Flick to go ahead with it, that as far as I was concerned, I didn't want that to interfere with any of the things like Piper, and so forth.

And then Mr. Flick proceeded to work on it, through his people, Mr. Reames and Mr. Priddle.

Q Mr. Wallace, do you recall that the Bangor Punta exchange offer to the Piper shareholders opened on July 18, 1969?

A Yes. Approximately that date, yes, I would say.

Q Prior to that time do you recall having any discussions with First Boston Corporation or representatives of First Boston Corporation ~~sometime in~~ concerning the BAR?

A Well, there were a whole series of meetings at our board of directors' room at 205 Park Avenue, where the registration statement was being worked on and problems connected with it -- it was sort of a general kind of a clearing house, and lawyers for Piper and First Boston, et cetera, were there from time to time.

But I do recollect a meeting at which I believe Mr. Flick and myself and Mr. Laeri, Mr. Arning whene we did discuss the railroad and the possibility at some point that a change would be made on our holding of the Bangor & Aroostook.

Q Mr. Wallace, I show you Defendant's Exhibit AA for identification and ask you have you ever seen that document before.

A Yes, I have seen this before.

Q And when and under what circumstances have you seen this?

A Well, I would say it came in approximately at the date indicated, August 7, 1969.

I see I am marked for a copy, and I am sure I read that.

MR. RYAN: I offer in evidence as Defendant's Exhibit AA a one-page memorandum for Mr. Reames to various executives, including Mr. Wallace, dated August 7, 1969.

pj-3 Wallace-direct

MR. LIMAN: I have no objection.

THE COURT: Received.

MR. RYAN: I believe Mr. Kushner is looking at it.

MR. KUSHNER: No objection.

(Defendant's Exhibit AA for identification received in evidence.)

Q Mr. Wallace, subsequent to your conversations with Mr. Flick sometime in August in which he told you that he had resumed the investigation, or his staff was continuing the investigation of the BAR, what next occurred, to the best of your recollection?

A Well, there was a great deal of work being done in the office on this, and I was aware of it. At one point, I would say mid to the latter part of September, Mr. Priddle reported back to us, and I can remember being at a meeting where Mr. Priddle presented to us his findings as to the possible tax basis of the assets of the railroad and the possible available -- availableness of those assets in the creation of a usable tax loss.

Q I show you Defendant's Exhibit Y for identification and ask you have you ever seen this memorandum before?

A Yes. I believe I saw this at some point.

sold that you saw this document?

A Yes. Yes, I believe that this was one of the -- that's my present recollection, that this and -- there were other documents, and we were reviewing --

THE COURT: This and other documents were what? Finish your sentence.

THE WITNESS: This and other documents were used at that meeting, when we discussed this situation, and this would be -- I can't say what date it was, I mean, but it would be in September, '69.

Q And did you read it then or was it just one of the documents that was being discussed?

A I am sure I read it.

Now there is a vast difference between "read" and "study," you know. I was -- my feelings at that point were that I wanted to make sure. All along I felt that there had not been an adequate development of the Bangor & Aroostook -- I mean the tax basis of those assets, and I wanted to make sure that there was an adequate and competent study being made, and that was my chief reason for sitting in on this meeting.

Q When you say you wanted to be sure a study was being made, you didn't make the study that is reflected in this document -- you, personally, David Wallace?

A No. This study that is talked about here was being made principally by Mr. Priddle and being assisted where he needed assistance by Mr. Reames, and neither of these gentlemen reported to me but reported to Mr. Flick, and I believe that probably Mr. Galle, who is our chief financial officer, was involved in, you know, giving them a little more expertise.

MR. LIMAN: If the offer is for the truth of what the document asserts, I will object. Otherwise I have no objection.

THE COURT: Mr. Kushner, what is your objection based on?

MR. KUSHNER: My objection is that this memorandum is an opinion of an accountant who was assigned to inquire into this problem, and I don't think that the memorandum can be understood properly without the accountant's testimony.

I would add, your Honor, that there is a deposition of Mr. Priddle, and I certainly won't object if the deposition is offered into evidence along with this memorandum of September 10th.

THE COURT: First of all, I don't believe this is an opinion. This is a report of a visit to Washington to inspect the railroad's records on file for the period

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I will offer it on that basis. All I am going to show is the state of mind of Bangor Punta in 1969. That's the relevance of that document.

THE COURT: This is what came before the operating officials.

MR. RYAN: Exactly.

MR. KUSHNER: On the basis just stated by Mr. Ryan, I withdraw my objection.

THE COURT: All right. Received.

(Defendant's Exhibit Y for identification received in evidence.)

BY MR. RYAN:

Q I show you Defendant's Exhibit Z for identification, which is a five-page accounting report, and ask you have you ever seen Defendant's Exhibit Z before.

A I have seen this typewritten report before. I believe when I first saw it it was in pencil form.

Q Do you recall when you first saw --

A About --

Q -- either that report or the handwritten report?

A Well, these reports would have been seen at about the same time when we were discussing this whole situation in September of 1969.

Q Are you referring to --

A I can't give you an exact date.

Q Are you referring, though, to the meeting with Mr. Priddle that you testified to before?

A Probably. Probably. That is my recollection now.

Q That is your best recollectionnow?

A Yes.

MR. RYAN: I offer Defendant's Exhibit Z for identification in evidence.

MR. KUSHNER: Your Honor, may I ask a question on the voir dire?

THE COURT: Yes.

MR. RYAN: Again I only offer it to show the state of mind of the executives of Congor Punta in September, 1969.

MR.KUSHNER: With that in mind, your Honor, it seems to me my question would be quite helpful.

VOIR DIRE EXAMINATION

BY MR. KUSHNER:

Q Mr. Wallace, you said that you couldn't fix the day when you had this meeting with Mr. Priddle. Can you fix the week?

A All I can tell you is that these meetings occurred

THE COURT: At all events, I take it that nobody has any objection to the offer on the basis on which it is offered, is that right?

MR. KUSHNER: Your Honor, understanding the basis on which it is offered, as limited to state of mind of Bangor Punta, I won't have any objection.

THE COURT: Received.

(Defendant's Exhibit Z for identification received in evidence.)

BY MR. RYAN:

Q Now, Mr. Wallace, you testified that you, subsequent to seeing Exhibit Z for identification, had another meeting concerning the BAR?

A Yes. We had a meeting in Mr. Salgo's office on September 23rd.

Q Are you certain that it was September 23rd? Wasn't it September 29th?

A Oh, excuse me. I don't know where I got -- September 29th. You are right. I never thought I would forget that date. But that's all right.

Q Do you recall who was present at that meeting?

A Yes. There was myself, there was Mr. Flick, Mr. Robertson, Mr. Hutchins, Mr. Salgo, and I think Mr. Galle. I know Mr. Preiskel. I know Mr. Wiele ~~Wheeler~~ of

Peat,Marwick was there.

Incidentally, Mr. Preiskel is a partner of Hans Frank.

Let's see who else.

I don't think Mr. Reames was there.

That's all I can recall. There may have been others but I can't recall them. Now that's all I can recall.

Q Can you tell us to the best of your recollection the substance of discussions that took place on September 29th?

A Well, the substance of the discussion -- Mr. Sabo wanted to review the findings of Mr. Priddle and Mr. Reames and, of course, of the Hans Frank firm, and the meeting was started by this -- with this format: We had Peat, Marwick there for questions, and so they also could be part of the discussion.

And each -- these findings were reviewed. Mr. Preiskel made the statement that they had been over this and that they believed there would be, if the assets of the Bangor & Aroostook was sold, a substantial tax loss would result, which could be used by the Bangor Punta Corporation in the future.

Q And do you recall anything further that was

discussed?

A Well, Mr. Hutchins, I believe, said that this was all very well, but if this was a method of not concluding a transaction with Mr. Dumaine, that he was going to resign from our board of directors and publicly state his reasons for resignation.

And Mr. Robertson said that he concurred fully with Mr. Hutchins' point of view and that unless Mr. Salgo and to some extent myself would be more cooperative, that he was going to resign also.

Q Do you recall any discussions?

A Well, at that point the meeting was pretty heated, and I said to Mr. -- Mr. Salgo started to say something to Mr. Dumaine -- Mr. Hutchins -- and I said to Mr. Salgo:

"Look. Let me take over and let's conclude this meeting."

And I then suggested to Mr. Hutchins that Mr. Hutchins and Mr. Robertson and I talk, and we did, and we subsequently had lunch that day with Mr. Harry Cole and Mr. Buck Dumaine at the Union League Club, I believe, and Mr. Dumaine -- Mr. Cole lives at the Union League Club.

Q And then, following that meeting, which was kind of incoherent, I went back up to Greenwich and I then was in conversation with Mr. Salgo. And that evening, in keeping with a promise I made to Mr. Salgo, I polled my board of directors on the whole Bangor & Aroostook situation.

MR. LIMAN: I couldn't hear what you said at the last --

THE WITNESS: Polled. You know, like taking a --

Q What next occurred, Mr. Wallace, to the best of your recollection, concerning --

A You mean what happened on the poll?

Q No. What next occurred?

A Well, let's see. Then the next -- maybe it was the next day. It must be the 29th. The next day or the day after there was a meeting between Mr. Hutchins, Mr. Robertson, Mr. Salgo, Mr. Flick and myself, in which, realizing that my board fully supported Mr. Hutchins and Mr. Robertson's point of view, we were then anxious to make the best possible deal with Mr. Dumaine, and Mr. Salgo and I requested certain conditions in my agreement reached with Mr. Dumaine.

Then I think it was October 1st or 2nd, Mr.

Robertson and Mr. Hutchins, together with I believe Mr. Reames, went to Mr. Dumaine's office in Boston, Massachusetts and signed a contract.

Q Now, Mr. Wallace, I am going to direct your attention to July 29, 1969. This was the last day of the Bangor Punta exchange offer.

Do you recall having a conversation with or being with Mr. Gordon on that day, Mr. Flick, Mr. Liman and myself and perhaps others, at which Mr. Gordon asked that Bangor Punta extend its exchange offer beyond a date in August so that Chris-Craft wouldn't have a 16(b) problem, so that Chris-Craft could offer the Piper shares to Bangor Punta, and as part of such agreement Bangor Punta would arrange for a secondary offering of the Bangor Punta shares?

Do you recall ever hearing Mr. Gordon make such a statement?

A No.

Q Did you ever have a conversation with Mr. Flick whereby Mr. Flick told you that Mr. Gordon made such a statement to him?

A No, I do not.

MR. RYAN: I have no further questions, your

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AFTERNOON SESSION

2.00 P.M.

DAVID W. WALLACE, resumed.

THE COURT: All right, Mr. Liman.

MR. LIMAN: I think Mr. Kushner wants to go first, your Honor.

CROSS EXAMINATION

BY MR. KUSHNER:

Q Mr. Wallace, you testified this morning that on September 29, 1969, you polled the members of the Bangor Punta board of directors on the railroad situation and you found that the board fully supported the point of view of Messrs. Hutchins and Robertson?

A I think I only testified that I polled the board of directors, and I would like to make it clear that I can't at this moment swear I spoke to every director, but I know I spoke to a majority of my board.

THE COURT: What date was that?

THE WITNESS: The evening of September 29, your Honor.

Q How did you put the question?

A I didn't put a question to them. What I did was, with the members of the board that I spoke to, I recounted the train of events and the alternatives that had been

developed. I would also like to make plain to you that in certain instances I wasn't really permitted to say very much at all. In one case a director told me that he had reviewed the matter with Mr. Hutchins and was satisfied that Mr. Hutchins' was the correct viewpoint.

Q Who was that director?

A Mr. George ~~Siel~~ Seal.

Q Did any of the directors tell you the same thing?

A I think the other directors all discussed the matter at a little more length with me, although the general feeling was that we should proceed as Mr. Hutchins was suggesting.

Q Did any directors express to you the view that Bangor Punta should not proceed to sell the railroad?

A I don't believe so. That is my recollection at this moment.

Q Do you recall attending a meeting of the board of directors of Bangor Punta on September 9, 1969?

A May I see the minutes?

Q Yes, sir.

A I think I did. I think I have that recollection, but I would like to make sure.

MR. KUSHNER: May I have these two documents marked for identification, please.

MR. KIMAN: Could we pre-mark some exhibits now,

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1969, the board of Bangor Punta authorized the sale of either the stock or the assets of the railroad for $5,000,000?

A Yes, I clearly recall it. I didn't take it too seriously, but I recall it.

Q Did you vote for that resolution authorizing the sale?

A The final vote, when we finally came to a vote -- well, let's see -- yes, I believe it indicates here no dissent, so I would assume I had voted for it and that would be my recollection.

Q Did Mr.Salgo attend that meeting on September 9?

A Yes, Mr. Salgo attended that meeting. His name is here as being present and I am sure it is accurate.

Q Did he have anything to say at that meeting on the subject of the railroad sale?

A Yes, he did.

Q What did he have to say?

A Mr. Salgo was still of the opinion that sufficient information had not been developed. I don't think he agreed with the strategy in Mr.Hutchins' dealings with Mr. Dumaine, and Mr. Salgo was still proposing counter steps, I think it was a sale and leaseback of the railroad, and the question of doing something with our own stockholders was discussed, and so forth. It became apparent that at least for the moment

the majority of the board was convinced we should follow Mr. Hutchins' and Mr. Robertson's lead and deal with Mr. Dumaine. I believe either some time during the meeting of September 9 or shortly thereafter I told Mr. Salgo that if we could develop more information that perhaps we could change the board's mind.

Q At that meeting of September 9 did anyone join Mr. Salgo in his views?

A I think Mr. Flick was somewhat skeptical about the transactions. You must realize we all had a somewhat disquieting experience with Mr. Dumaine in connection with the Delaware & Hudson and I think Mr. Kingsbury, while not perhaps as vocal as we were, being from Brown Brothers, also had some skepticism about Mr. Dumaine.

THE COURT: What was that disquieting experience with Delaware & Hudson?

THE WITNESS: Yes, sir.

THE COURT: I say, what was it?

THE WITNESS: In mid-1968, Mr. Salgo and Mr. Dumaine had discussions, and the thrust was that Bangor and Aroostook -- rather, Bangor Punta would acquire the Delaware & Hudson Corporation, which in turn owned the Delaware & Hudson Railroad. And Mr. Dumaine was -- I recall the gentleman whose name I have mentioned earlier, Mr. Silleck -- Mr. Dumaine and Mr. Silleck, who were both on the board of directors of the Delaware & Hudson, were having an argument. Mr. Silleck wanted the Delaware & Hudson Corporation to sell the railroad. Mr. Dumaine wanted to continue in the railroad. Mr. Dumaine was the largest stockholder in the Delaware & Hudson.

Then I think that both sides thought that Bangor Punta was somehow going to come in here and resolve the issue between them, but as negotiations went on, it became painfully clear that the only resolution Mr. Dumaine would accept was the resolution of the thing where the railroad was retained by the company, and Mr. Silleck felt the opposite, and it also became apparent to me that we were in a situation that was going to be nothing but difficult, and after

discussing it with Mr. Flick and some of my directors, I believe Mr. Salgo was then in Europe, and I called him in Europe -- I called off all the negotiations with Delaware & Hudson. But during the course of this, we had some pretty heated discussions with Mr. Dumaine.

Q While we are on the subject of prior experiences, do you recall that Amoskeag Company made a loan to Bangor Punta prior to 1969?

A That was before my time, before my employment by Bangor Punta, but I recall it very deeply, because evidently there was some people in Bangor Punta that felt that Mr. Dumaine somewhat resented that loan, because the loan was made to Bangor Punta at the time we acquired our Smith & Wesson Division, and that, as you know, has probably been one of the most successful acquisitions we ever made. And I think Mr. Dumaine was disappointed that he wasn't made a partner rather than a creditor.

Q Do you recall that Amoskeag received as part-consideration for the advance of funds 80,000 shares of Bangor Punta Corporation ~~at~~ $1.25 convertible preferred stock, Series B?

A Yes. That's correct.

Q Do you recall that in January, 1969, Amoskeag exercised its right to have these 80,000 shares ~~from~~ purchased by Bangor

Punta for $3,500,000?

A Yes. I believe that's correct, too.

Q And do you recall whether or not Mr. Salgo was disturbed that Amoskeag insisted on receiving $3,500,000 in cash rather than in Bangor Punta securities?

A No; I don't believe so. If you have some way of refreshing my recollection -- but I don't recall much discussion about this other than there was some question in our minds of whether Mr. Dumaine would seek that stock as a convertible stock or whether he would convert it into common or utilize his rights under the original loan agreement to have the stock purchased. But I don't think it created much of a discussion at the time.

Q In any event, he had the stock purchased?

A What?

Q He had the stock purchased in January, 1969?

A It was a contractual obligation on the part of Bangor Punta Corporation to purchase that stock from Amoskeag. That's correct. And we did so.

Q At this meeting of September 9th, did anyone besides Flick and Kingsbury express skepticism about Dumaine?

A Well, I can't recollect at this moment. I do know that during the Delaware & Hudson time, Brown Bros. Harriman had considerable difficulties with Mr. Dumaine.

Q Was this skepticism at the September 9th meeting expressed in terms of a question whether Mr. Dumaine would go through with the purchase of the railroad?

A I don't think it was necessarily a question of whether he would go through, but, you know, a feeling, negotiating with Mr. Dumaine was like perpetual motion: there's always something new being dragged up and something else being thrown into the hopper and so forth and so on.

Also, I think on some minds there was a question of whether Mr. Dumaine was speaking for Mr. Dumaine or whether Mr. Dumaine was speaking for Amoskeag, who was supposed to be the purchaser.

Q Did anyone bother to ask Mr. Stone thatquestion?

A Yes. I believe we did discuss it with Mr. Stone. Mr. Stone was at that time -- I think he is now resigned from the board of directors of Amoskeag.

Mr. Stone in the content of our dealings with Mr. Dumaine stated to the board he had a directorship in Amoskeag and therefore tried not to involve himself in, you know, disclosing what was happening at the Amoskeag board level and what was happening at our board level.

Q Well, did Mr. Stone not say anything on whether Dumaine was dealing for Amoskeag or for himself at this September 9th meeting?

A Oh, I don't think there was ever any question but whether Mr. Dumaine was dealing for Amoskeag. The question was, you know, what was Mr. Dumaine's authority. Nobody believed for a minute that Mr. Dumaine was buying or seeking to buy the railroad for his own account.

Q Did anyone ask Mr. Stone what Mr. Dumaine's authority was?

A Well, Mr. Stone had in effect asked not to be put in the position of disclosing Mr. Dumaine's discussions with his corporation. He felt it was an ethical position for him to be in.

Q Incidentally, this meeting on September 9, 1969, of the Bangor Punta board: it was originally scheduled as a meeting of the executive committee, was it not? I refer you to page 1 of Exhibit 62 for identification.

A Yes. Probably what happened there was that so many directors decided to come that they decided to hold it as a directors meeting, a board of directors meeting rather than as an executive committee meeting. The whole purpose of the executive committee meeting: we pay fees to any director that comes either to an executive committee or a board meeting. Now, the only reason we have executive committee meetings is to produce the quorum requirement. When we found out we had thirteen directors

attending this meeting, probably Mr. Flick said, "We might as well switch it to a full board meeting as have the" -- I'm just now trying to reconstruct it -- "as have an executive committee meeting."

Q Thirteen out of eighteen?

A Out of eighteen, right.

Q Do you know the reasons for the large turnout on September 9th?

A I would assume it was because the plot was beginning to be stirred on this whole Bangor Aroostook controversy.

Q Stirred by whom?

A I would suspect probably by Mr. Hutchins and I don't know who else.

Q Mr. Robertson?

A Perhaps. I don't know. I'm now speculating.

Q You didn't find out at the meeting of September 9th the reason for the large turnout?

A No, sir; I didn't.

Q Now, in casting your vote on September 9th for the authorization to sell either the stock or the assets of the railroad for $5,000,000, what were your reasons?

A Well, as chief executive of Bangor Punta, I am charged with what I consider the -- what is best for the stockholders and for the company, and I felt that with the

problems that we had, there was no -- nothing to be gained by an open breach by recording in the minutes that there was four directors that felt this way and five directors felt that way, and we have had a history of board meetings where our directors have, such as Crossman Arms, I'm thinking of, authorized the closing of a transaction, or Delaware & Hudson, and when the management felt that facts had come to light that was not presented to the board, we were able to reverse that decision, and I felt that there was no point in an open rupture between Mr. Salgo and Mr. Hutchins, and I prevailed on Mr. Salgo to work and try to resove this thing amicably, and I honestly did not believe at the time of September 9th that the railroad issue had been laid to rest.

Q By referring to your efforts with Mr. Salgo, did you persuade him to vote for the resolution of sale on September 9th?

A Well, you know, these votes are conducted by saying,"All in favor," and I can't at this moment swear whether Mr. Salgo sounded off saying, "Aye."

But there was no dissent and there was no abstentions recorded, either, so I think he has to be counted as voting for.

Q As of September 9, 1969, did you believe it would be a good business decision for Bangor Punta to sell the railroad for five million dollars?

A How to sell it?

Q Sir?

A How? By a sale of assets or a sale of stock?

Q Well, explain your answer.

A Well, I was coming to the conclusion that perhaps Mr. Salgo had more on his side in terms of which transaction was more advantageous for the corporation in an asset sale, which would have generated a substantial tax loss which we could have used and which we had spent a lot of time with the Hans Frank firm in ascertaining and with Peat, Marwick & Mitchell, and with our own internal people.

I was coming towards that viewpoint, but I wasn't completely there. But there was still this talk of leaseback and everything else.

All this kept floating around, you see, during this period.

Q As of September 9, 1969, is it correct that you had not yet received the report of Messrs. Priddle and Reames which purported to establish a tax basis for the assets of the railroad?

A I don't think at that time we had the final report of Mr. Priddle and Mr. Reames. That is my recollection.

Q And as of September 9, 1969, what was your state of knowledge concerning the construction of a tax basis for these assets of the railroad?

A Well, I felt that if Mr. Salgo was right -- and it would still take the development of further information which could only be gotten by a great deal of digging up in Bangor, Maine, in the railroad records -- and also, I am trying to record -- but there was something done with the start of the federal income tax in 1911, or whenever it started, that meant they had to go down to the ICC and get some records that were there on that date for tax purposes on the value of those assets from a tax

standpoint, and all of that information, as I recollect, was still in the process of being developed.

I think that probably we had reports, you know, from the ~~fund~~ field, that Mr. Flick would have relayed to me, but that's all I would have had.

I don't think the full development was there.

In my mind, on September 9th, was a desire to see further investigation and clarification, but this thing was getting to be an emotional issue, and Mr. Hutchins and Mr. Robertson were pressing for a finalization of the thing.

Q What did Mr. Hutchins and Mr. Robertson say at this September 9th board meeting in pressing for a finalization?

A Well, Mr. Hutchins had a number of points.

One, he felt the railroad was coming to a point where there would have to be substantial additions to its rolling stock.

You must understand that the Bangor & Aroostook in the past has really lived, I would say, half as a railroad and half as a leasing company, because they make, I think, more money out of renting their reefer cars and their locomotives than they do out of the railroad.

You know, it is only a small railroad, some 640

miles up in Maine, and has a very limited revenue, and I think Mr. Hutchins' point was that this meeting that if you got a period of increasing money rates, it would make very difficult to maintain a profit margin between what we were carrying in the certificates of trust on the new cars that we had purchased and what we were able to rent them out to for people like Pacific Fruit Express and New York Central, and so forth.

Q Was there anything else that Mr. Hutchins expressed or Mr. Robertson expressed at this meeting of September 9th?

A Well, they felt there was statements made which I didn't pay much attention to that we should try to sell the railroad to somebody who had the interests of the State of Maine at heart, and so forth and so on, but I regarded those as campaign rhetoric and not much of substance.

I think there was also some statements that Mr. Dumaine was an excellent railroad man. I think there is some question in Mr. Dumaine's mind as to what the near future earnings of the BAR would be, which I shared.

Q Was that Dumaine's mind or was that Hutchins' mind?

A Excuse me. I misspoke myself. In Mr. Hutchins' mind. I confused the two.

Q You shared that view of his?

A I shared that view because I have a skepticism based on long knowledge of the viability of railroads generally.

Q Did either Mr. Hutchins or Mr. Robertson state anything at this meeting of September 9th about capital contributions which Bangor Punta might have to make to the railroad?

A I would assume that that probably was there when they discussed the additions to rolling stock, and so forth, that we might have to be making, you know, that in other words, the cash flow would be fromus to the railroad rather than from the railroad to us.

Q What was your opinion about that?

A I didn't have very much of an optimistic opinion about any positive cash flow out of the railroad to us. I don't know that I really agreed that all the -- these capital appropriations would be necessary.

That depends on what you are trying to do with the railroad.

Q Did you yourself, as of September 9, 1969, wish to dispose of the railroad?

A Well, I wished to see a solution to this problem. I wished to see something resolved. I felt

Q Do you recall Mr. Salgo at that meeting on August 7,1969,stating that management deemed it advisable to dispose of certain assets, including the railroad? Are you looking for the page number?

A Yes.

Q I refer you to Page 12.

A Yes, I recall this conversation.

Q Do you also recall Mr. Salgo telling the meeting that it was essential that Bangor Punta achieve real hard values for the assets, including the railroad?

A Yes. That was, your know, probably said. At this moment I don't recall it, but I read it here and I would say that was true.

Q Is that term "real hard values" something which is peculiar to Mr. Salgo or it is a term commonly used?

A I think Mr. Salgo was trying to lay a basis for making difficult Mr. Hutchins' proposal.

Q Does the term "real hard values" --

A That to me means cash, you know, and getting a full value, a hard, real value, not some ten cents down and $5 later thing.

Q No financing?

A Well, no financing by us of the purchases, yes.

Q Did anyone disagree with that statement by Mr.

Salgo, that it was advisable to dispose of the railroad and it was essential to achieve real hard values for it? I am referring to the meeting of August 7, 1969.

A I don't think so. This is sort of a motherhood speech, and I don't think anyone would object.

MR. KUSHNER: May I have that answer reread?

(Answer read.)

Q It was something with which everyone attending the meeting agreed? Is that what a motherhood speech means?

A By that I am saying the corporation should perhaps get out of things that were not as attractive as they might be, that we should only stay with the growth areas of our business and anything we sold we should get a good, fall, hard value price for. I don't see how anybody can object to those statements. The doing of them may be another thing, but the stating of them is very simple.

Q Why is it that real hard values were sought?

A I don't know. That probably was something in Mr. Salgo's mind. As I say, I suspect he viewed that as putting another roadblock in the way of the railroad deal.

Q That is something you read on the face of the statement attributed to him or have you found a double entendre?

A No. I have known Mr. Salgo for many, many years, and I know how he felt in this time, in August, September,

***

Q Do you recall reviewing with Mr. Reames prior to the September 9, 1969, Bangor Punta board meeting the status of his study with regard to the railroad?

A I have no recollection, really, one way or the other.

Q Did you testify this morning about some heated discussion at the May 21 meeting of the Bangor Punta board?

A Yes. That I believe was the first time officially that Mr. Dumaine's name came into the thing. I think we had some indication of that shortly before the meeting actually took place -- I don't know, maybe a couple of days beforehand we may have heard that Mr. Hutchins was having talks with Mr. Dumaine. The May 21st meeting was the first meeting that the idea of doing something with DuMaine was officially raised at a Bangor meeting.

Q And you referred to heated discussion at that meeting?

A Yes.

Q This heated discussion being between Mr. Hutchins and Mr. Salgo or did it include other people?

A No, I think the heated part includes Mr. Hutchins and Mr. Salgo. The discussions would be between other people, but heated between them.

Q Do you recall what the other people had to say?

A Mr. Flick and my signature, which indicates to me that Mr. Flick took part of the minutes and then I took part of the minutes.

Q Do these minutes refresh your recollection as to whether Mr. Salgo put forth a counter proposal of $7 million for the stock of the railroad?

MR. KUSHNER: May I have this document marked for identification, please. It consists of two pages.

(Plaintiff's Exhibit 66 marked for identification.)

A Oh, yes, I recall this.

Q Your answer is it was a $7 million figure for the stock of the railroad?

A Yes. I don't think it was a very serious proposal, but I think it was made.

Q On the part of Mr. Salgo?

A No, I don't think Mr. Salgo was serious in this.

Q Was this part of his tactical pursuits?

A Yes. Mr. Salgo was interested in one thing. Mr. Salgo felt that the maximum value of the railroad would only be realized by a sale of assets and if we were not going to sell the assets, then I think Mr. Salgo felt we should not at that time be doing the other one, selling the stock, and I don't know, you know, again -- this is not right, but

I am projecting myself to Mr. Salgo's mind -- I don't know how serious the $7 million was.

Q Did he ever tell you it wasn't seriously uttered by him?

A No, certainly not.

Q Are you able to identifyExhibit 66 for identification (handing)?

a This is a memorandum from Mr. Salgo and Mr. Robertson to myself, dated March 26. "Enclosed you will find a typical Bob Page letter."

Bob Page was the chairman of Garvey Industries, who are substantial stockholders of the family -- the Garvey family are substantial stockholders of Bangor Punta and this letter, this memorandum had attached to it a letter from Bob Page, who is ~~our own,~~ ON our board of directors now, dated May 13, 1969, which he said, why not spin off the Bangor and Arcostook, and knowing Mr. Salgo,he immediately circulated something when he gets it, and I have initialed that.

MR.KUSHNER: I offer Exhibit 66 for identification in evidence.

MR. RYAN: I have no objection, your Honor.

xxx (Plaintiff's Exhibit 66 for identification, received in evidence.)

Q Exhibit 66, this memorandum from Mr. Salgo to Mr.

Robertson and yourself, dated March 26, 1969, mentions a possible spinoff of the railroad and then concludes with "If you want to involve Curtis in this question, will be delighted to make him a one-man committee to explore the matter with potential underwriters."

Is Curtis Mr. Hutchins?

A Yes, and that particular paragraph was, in my opinion, addressed to Mr. Robertson. The memorandum is sent to Mr. Robertson and myself and Mr. Robertson and Mr. Hutchins at that time both resided in Bangor, Maine, saw each other every day, practically, etc. etc.

Q Did they usually see eye to eye on questions involving the railroad?

A They both were former presidents of the railroad and I think both substantially agreed on railroad matters.

Q If you will refer to Exhibit 65 for identification, the May 21, 1969 board minutes, I note your signature at the very conclusion. Is that your signature?

A That is not the minutes. That is -- excuse me, there are really two things attached to this exhibit and my signature appears on Page 15, along with Mr. Flick's, and then the next item in the minute book was a call by the president and myself of a meeting of the stockholders of August 7th, to pass on the Piper Aircraft transaction.

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That must have come clipped onto this because it was the next thing in the minute book, but it is not part of these minutes.

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Q I see.

Do you recall at this board meeting on May 21, 1969, the board requesting Mr. Hutchins to go back and get a definitive offer from Amoskeag?

A No. My recollection is that Mr. Hutchins was told to investigate and study all possible alternatives to the corporation, including, I still think, holding the railroad.

I would like to see the minutes and I will refresh my recollection.

Q Why don't I show you the minutes once more, Exhibit 65 for identification?

A As I read this, yes. Mr. Hutchins had the right and had the directive, as a matter of fact, to ascertain just what Mr. Dumaine's intentions were, but he was also told to investigate the accounting and tax ramifications of such a transaction, referring to the Dumaine transaction, which to my mind would flush out all the other possibilities.

Q That is the way you read the minutes?

A That's the way I read the minutes in the light of my knowledge of what was going on at the time, that is right, yes.

Q Did you write that part of the minutes?

A I write no minutes.

Q You took notes, didn't you?

A I took notes, but I write no minutes.

What I think happened is that I told Mr. Flick after he left, and he wrote them up. I didn't keep any stenographic records.

Q You didn't give him any notes that you took?

A I don't believe so. If Mr. Flick said I gave him notes, I gave him notes, but my recollection is I did not. I have no real recollection.

Q Now if you will examine those minutes, Exhibit 65 for identification, there is a statement by Mr. Hutchins that he wishes to ascertain whether Amoskeag Company is willing to submit a definitive proposal.

Do you recall whether Mr. Hutchins did obtain such a proposal?

A I don't think we had a definitive proposal ever until they closed the transaction in October.

Q The period of delay between May 21, 1969, and October 2, 1969, didn't arouse any concern in you that Mr. Dunaine would lose all interest in the railroad?

A Frankly I felt that the value of the railroad might be more in its death than in its life, and by that I mean that the real value might be in the tax loss

generation.

At least that's the way I felt, I would say, in mid-1969.

And, furthermore, I didn't think that if Dumaine was serious that he was going to go any place because as difficult as it is to sell a railroad, it is as difficult to buy a railroad in Maine, because there aren't very many.

So I didn't feel there was much going to happen either way.

Q Are you suggesting in your prior answer just now that you were considering abandonment of the railroad?

A No, I didn't suggest anything of the sort.

Q Were you suggesting a sale for a minimal amount of the assets in order to generate a tax loss?

A Well, one of the things I thought of was doing something like now has subsequently been done by Mr. Heineman in Northwestern, and that is sell the railroad to its employees, which is not an abandonment.

Q Was there ever such a plan?

A What?

Q Was there ever such a plan considered?

A No. I think there was discussion of that at one point, but I don't think that it has ever got very

far.

Q Incidentally, did you ever consider selling the railroad in a manner other than as a going concern?

A Well, there was this discussion, you know, of the sale and leaseback idea, in other words, where we would lease the railroad to somebody who would run it.

There was, I think, when you talk about the idea of merging the railroad with another railroad and taking back railroad stock -- that's another kind of a ramification.

There were so many different ramifications that I don't know whether I can answer your question other than giving you the instances.

Q Well, let me put the question --

MR. KUSHNER: Did your Honor want to ask something? I am sorry. I thought I was interrupting you.

THE COURT: You interupted a thought, but not a question. I did not make any significant acts.

Q Let me put the question differently, then, Mr. Wallace.

Did Bangor Punta ever consider selling the railroad as scrap?

A As scrap?

Q As scrap, yes, sir.

A I don't think so. No, not to my knowledge, no.

Q Did you explore, ever, whether the Interstate Commerce Commission had to give approval of such a transaction?

A Well, I think that implicit in Mr. Flick's instructions to investigate the legal and accounting aspects was to check the Interstate Commerce Commission regulations on it -- whatever we did. But I don't think anything was ever done about scrapping the railroad. I would doubt it simply because I find that liquidating companies are probably the most expensive thing you can do. All kinds of severance pay and all sorts of nonsense.

THE COURT: I think the reasons for these questions may be, Mr. Wallace, that Mr. Dumaine when he testified, as the first witness on the trial, testified that he thought the railroad had a value of $13 million if it was sold off in bits and pieces and that he got a bargain at $5 million.

So you are now being asked the question as to whether or not anything was generated along those lines so as to cause Mr. Dumaine to come to that evaluation.

THE WITNESS: No. I don't know how Mr.

Dumaine reached his figure, but he would have to be including, in my opinion, in that the value of the tax aspects of the railroad.

I don't think you could say $18 million, you know, for what you would get in cash from a buyer even if bits or pieces or in parts. It would have to be some way or other utilizing the cash generation of a tax loss.

That's all I could see.

Q Mr. Wallace, how long have you been at Bangor Punta?

A Since mid-1967.

Q And while you were at Bangor Punta, was there any committee prior to the Hutchins committee ever appointed to look into the disposition of the railroad?

A I don't know that you could call it ever a formal committee, but there were investigations of doing something withthe railroad while I was at Bangor Punta.

The first one was, as I say, this formation of a New England railroad system, which I believe was reported fully in the Wall Street Journal in 1967 and which I recall I was not directly involved in it, only really maybe hoping it would go through in some way, and the other would be this D & H transaction. Those are

the two that stick in my mind.

I know there was also talk before that with Spencer Miller before I came to Bangor, who was president of the Maine Central.

Q Who took care of the D & H situation for Bangor Punta?

A At the outset it was Mr. Salgo. At the end it was me.

Q And was there any reason that both you and Mr. Salgo didn't also handle the study committee to which Mr. Hutchins was appointed chairman?

A I think there was a very good reason.

Q What was that?

A One, I think everybody knew Mr. Salgo's opinion, to begin with, and, two, I think everybody figured I was trying to preserve order in the house and not take a stand one way or the other until I had learned more.

And, you know, I think there is nothing more despised than a neutral between two -- you know, two bodies of opinion.

Q While you were at Bangor Punta had any $5 million cash offer prior to the Dumaine offer ever been made for the railroad?

A No. Not to my knowledge, any other five

million dollars' offer.

Q Have you seen Exhibit 2 prior to today?

That is the letter of May 27, 1969, from Mr. Hutchins to Mr. Dumaine.

A I don't know about this letter. I have subsequently learned about it but at the time I did not know about it. It's a letter dated May 27, 1969, unsigned, from Mr. Hutchins to Mr. Dumaine.

Q Now you mentioned that you were chief executive officer of Bangor Punta from mid-1969, is that correct?

A That's correct.

Q That is April, 1969?

A I believe that's right.

Q Who was chief executive officer before you?

A Gordon Robertson.

Q And for how long was Mr. Robertson chief executive officer?

A I think for about three or four years.

Q Do you recall a meeting in early June, 1969, attended by you, Mr. Hutchins and Mr. Salgo, and perhaps Mr. Flick and others, where the status of the railroad negotiations was discussed?

A Yes. I believe there was a meeting like that in early June and I believe that that was the time when

we were raising the problems of really ascertaining all the facts and not deciding on anything until the facts were in, of getting the facts.

I don't know whether Mr. Frank was at that meeting or not. I know he was at some meetings-- Hans Frank.

Q Do you recall Mr. Hutchins at that meeting?

A I think Mr. Hutchins was there. That's my recollection.

Now if you have some way of refreshing it --

Q How about Mr. Robertson?

A No. I don't think Mr. Robertson was there.

Q Was there a discussion of the effect on Bangor Punta's financial statements of a sale of the railroad for $5 million?

A I believe at some point we discussed with Mr. ~~Wheeler~~ Wieler of Peat, Marwick these various transactions. I can't give you the exact time to mention.

Q Was there concern voiced by anyone that the sale of the railroad for $5 million would have to be reported as a loss on the financial statements?

A Well, there was some question as to whether, if you sold it for $5 million as a sale of assets, that there would be a loss.

As far as -- you know, because of the tax

benefit.

You know, you understand that the railroad tax basis might well be higher than the -- what we were carrying the railroad assets for on our balance sheet.

MR. KUSHNER: May I have the answer read back, please?

(Answer read.)

Q Mr. Wallace, I show you Exhibit Z, these schedules prepared by Mr. Priddle, and one page bears the date, 9/12/69.

I ask you whether, even in those schedules, there is not a loss involved upon the sale of the assets of the railroad.

A Yes, but this was after Mr.Priddle had made an investigation in the summer.

You must remember, if you go back into the history of this $18 million carrying cost of the railroad, that was in a sense an agreed carrying cost based on an appraisal and not based on the value of the assets in the Bangor & Aroostook record books itself.

Now if you sold the assets -- and at the time I recollect that there was some thought that there was the -- that the cost basis of our assets was -- were in excess of $18 million, that the railroad is being carried

on our books for, and that has no reference to value but merely the historical tax basis.

Now Priddle's investigation -- this is precisely why we wanted an investigation made by Priddle: to determine what these values were and what the tax basis really was, what we could support.

If I recollect, there were still some areas in Priddle's report where he threw question on whether we could establish certain points of value which we thought we had, you know, certain tax bases.

Q As of early June, 1969, did you know whether or not there was a problem in constructing the tax basis for the railroad assets?

A As of early June, 1969, all I knew was I didn't know very much, and that is what troubled me, and that is why I did not want to see us rush into some shotgun wedding because of the fact that we didn't have sufficient investigation.

Q So that you had hopes as of early June, 1969, of one day possibly establishing a large tax base for the assets, is that correct?

A I viewed it as a possibility. I don't know whether I would characterize it as a hope.

Q Is the name John Coward, C-o-w-a-r-d, familiar to you?

A Yes.

Q Have you ever met Mr. Coward?

A No.

Q Have you ever spoken to Mr. Coward?

A I don't believe so.

Q Not over the phone?

A I could have. I just don't remember. One part of my mind says I did and the other part of my mind says I didn't. If you have some way of helping me on that, I will

Q Are you able to identify Exhibit 71 and Exhibit 72 for identification. Have you seen these prior to today?

A Well, I know I had to see the memorandum which is marked Exhibit 72 and dated September 24, 1969, because my initial is on it. Again, that is an indication that I read it and it was sent out to my file.

I believe I saw this other memorandum.

Q Exhibit 71 for identification?

A Yes.

Q Have you seen Exhibit 70 for identification prior to today?

A Well, since there is a copy of it sent to me, I would guess that I saw this. I had forgotten this memo, but this fits in with what I told you earlier, that I may have known about Hutchins' proposal of May 21 beforehand. The memo is dated May 20. Mr. Lushing is a financial officer, a vice-president of Bangor Punta Operations.

Q This memorandum refers to Exhibit 70 for identification?

A Correct.

MR. KUSHNER: I offer Exhibits 70, 71 and 72 in evidence.

(Pause.)

MR. RYAN: I have no objection.

(Plaintiff's Exhibits 70, 71, and 72 for identification received in evidence.)

Q Do you recall Exhibit 70 as being the memorandum dated May 20, 1969, from Mr. Lushing? Do you recall that?

A I don't recall it, but I am sure I received it because my name is on it and, you know, I told you I had this impression that I may have known it a few days ahead of time, of Mr. Hutchins' thoughts.

Q Was it you who suggested that Mr. Lushing contact Peat, Marwick and find out what the accounting treatment would be on the sale of the railroad?

A Yes, it could well have been. I can't really say at this point. That would not be an outlandish assumption.

Q Do you recall discussions you had on this subject after receiving this memorandum of May 20, 1969?

A No, I do not.

Q Was the subject raised at the board meeting of Bangor Punta on May 21, 1969?

A As I say, that is the first time officially that Dumaine's name came into the picture, at that May 21 meeting.

Q Did anyone at that meeting recount how the sale of the railroad would be treated in Bangor Punta's financial statements?

A Well, I am sure that based on what I know of the

normal course of conduct of directors that someone had raised the question of the accounting treatment, and so forth, on anything we did.

Q But you have no specific recollection?

A No, but I am sure that would have happened.

Q Are you sure who would have raised it?

A Any number of directors could have.

Q Prior to July 18, 1969, did you discuss with Mr. Robertson the status of the negotiations with Mr. Dumaine for the sale of the railroad?

A Prior to when?

Q July 18, 1969. That is when the Bangor Punta registration statement became effective.

A I am almost certain I did not, and I will tell you why: I had come to the conclusion that they were really discussing this thing without adequate facts and I was interested in seeing the whole thing cooled off a little bit while facts to be developed, accounting facts, legal facts, et cetera, and give all these proposals a full study and a chance to be evaluated, and if I discussed it with Robertson, who was one of the proponents, along with Hutchins, of Dumaine, that would have been very poor tactics on my part. I do some dumb things, but I don't think I would have done that.

Q You also did not discuss it with Mr. Hutchins prior to --

A The same line of reasoning would apply to Mr. Hutchins as Mr. Robertson.

Q Would the same line of reasoning apply to your attempting prior to July 18, 1969, to determine the views of the Bangor Punta directors on the sale of the railroad?

A Yes, because the directors wouldn't know what they were talking about until they had all the facts. I wouldn't know what I was talking about, couldn't know what I was talking about until Mr. Priddle and Mr. Reames completed their studies. I am not sure that we shouldn't have been studying it through October.

Q Isn't it a fact from what you have just said that the directors acted on September 9, 1969, with inadequate facts before them?

A The directors may have felt that they had facts sufficient to make a decision. The fact of the matter is it would be my opinion that they did not have enough facts.

Q You recognize there is room for reasonable difference of opinion?

A Always.

Q Did you testify on direct examination that it was necessary to send your legal people to the Interstate

I think if the stockholders are getting a decent management there must be controversy and discussion.

Q Are you able to keep count of the instances in which Mr. Salgo won and the instances in which Messrs. Hutchins and Robertson won?

A I think if I were doing that, I should be fired.

Q It wasn't unusual for Mr. Robertson and Mr. Hutchins to have their view prevail when they disagreed with Mr. Salgo, was it?

A I would say it was quite unusual. Mr. Salgo is a very strong personality and if I were to bet on who was going to win an argument between Mr. Hutchins and Mr. Robertson, on the one hand, and Mr. Salgo, on the other hand, I would bet on Mr. Salgo everytime. Unfortunately for Mr. Salgo, I came to the conclusion I should support Mr. Hutchins and Mr. Robertson.

Q Is it your testimony that your decision to support Hutchins and Robertson swung the pendulum in this case?

A I think if I held out, I could have probably at least stopped the transaction consummated on October 1 or October 2, whenever it was.

Q Despite what the directors told you when you polled them?

A Sure.

Q You have absolute confidence in your ability to persuade the directors?

A I have absolute confidence that I can be as ornery as anybody else.

Q Did you testify Mr. Salgo brought Hans Frank in in June, 1969, to study the tax questions regarding the railroad?

A Yes.

Q Did Mr. Frank ever give you a written report of his results?

A I believe I heard a verbal report of the results. I believe I heard it from Mr. Preiskel. I had some telephone conversations with Hans and I may have gotten reports from him then. I don't believe I ever read a written report.

Q When you refer to Mr. Preiskel --

A Preiskel.

Q -- P-r-e-i-s-k-e-l. When you refer to him are you referring to the memorandum he wrote at the end of September, 1969?

A Yes, I am aware of that memorandum, but I am referring more to the fact that at some point I heard Mr. Preiskel verbally state his opinion, and that was at that September 29 meeting, when Mr. Preiskel told us there was a tax advantage to be obtained from the sale of assets

and that tax advantage was usable by Bangor Punta, and that is the one that was backed up, I believe, by a written memorandum, and that viewpoint was supported by Hans Frank.

Q Did Mr. Preiskel also tell you in the September 29th discussion that to the extent the loss exceeded the fair value of the assets in 1964 youwould have a problem?

A He may have given us certain modifications of it, but the net result that sticks in my mind is that no matter how you wash it, the chances are we had a substantial tax loss if we sold assets, and we certainly did have a taxable capital gain with the sale of stock.

Q Did you ever attempt to determine the fair value of the assets of the railroad in 1964?

THE COURT: 19 what?

MR. KUSHNER: '64, your Honor.

Q Are you familiar with the term built in loss deduction?

A The term what?

Q Built in loss deduction.

A No, I don't know what it means.

A You have never heard that?

A I could have heard it but I could have also not understood it. I am not familiar with it.

Q Did you ever attempt to determine the value of

standing?

A No, but all are directors, I think, are in good standing.

Q Now going back in time, you testified as to your meeting on May 7th with Mr. Laeri, I believe, and on May 8th at the Chadbourne office with respect to the May 8th agreement.

A Yes, sir.

Q Now is it a fact that the first time that Bangor Punta was contacted by a representative of Piper was in January of 1969?

A. My recollection is that in January there was some contact from First Boston, either Mr. Paul Miller or Mr. Jack Laeri.

I don't recall which.

And then there was a time I thought was later, like in early February, but that's subject to correction because I just refreshed my recollection. We were called by Mr. Stickley and a partner of Arthur Young, who came and visited me at my office.

Those were -- first was the contact from First Boston and second was the contact by Piper.

Q Did you have a meeting in your office with Piper representatives in February?

A Yes. That I recollect. That's the one I am talking about.

Q And do you recall that a memorandum was made of that meeting?

A Yes. I believe that I made a memorandum of that meeting.

Q Well, is it possible that Mr. Wakefield made the memorandum and that you reviewed it?

A Well, maybe it was Mr. Wakefield who made the memorandum.

I am sorry. I didn't mean to take credit away from Mr. Wakefield. He worked for Arthur Young and we had him attend the meeting as a witness.

Q You saw the memorandum?

A I think I got a copy of it.

Q May I show you Exhibit 74 for identification, which is a memorandum dated February 25, 1969, from Mr. Wakefield to the file, with a copy to you and Mr. Salge and Mr. Flick.

Can you identify that as the memorandum?

A That's definitely the memorandum. I recall this memorandum very well.

And you are right, it was done by Mr. Wakefield.

Q And does it reflect the substance of what was

said to you at this meeting?

A I believe it does.

Q And do you now recall that Mr. Laeri and Mr. ~~Byers~~ BAYARD of First Boston Corporation had attended that meeting?

A I remember Mr. Laeri, and with no disrespect for Mr. ~~Byers~~ BAYARD -- he may have been there -- I just don't recollect him at this point.

Q And directing your attention to a paragraph of this memorandum, was it indicated to you at that meeting that:

"The Piper family to this stage still think that they might be able to fend off Chris-Craft by placing additional shares in friendly hands, specifically, 300,000 shares to Grumman and a small acquisition" --

A Yes. That's definitely the truth.

Q That was said to you at that meeting?

A Yes.

Q Who said that to you at that meeting?

A Well, I would guess, but I am pretty firm in my recollection that it would have been Mr. Gene Stickley of Piper Aircraft.

Q And was there any discussion of what the small

acquisition is that is referred to in that memorandum?

A No.

Q Was Southply mentioned at this point?

A Not to my knowledge.

Q Was U. S. Concrete mentioned?

A No, not to my knowledge.

Q Is it fair to say that you told the Piper representatives that Bangor Punta was not interested in talking to Piper unless the Piper family was prepared to commit its stock to you?

A Absolutely --

MR. PENNOYER: Objection, your Honor. This is beyond the scope of the direct, and in so far as it may be the case against Piper individuals, I don't think there should be any leading of this witness.

THE COURT: Well, if it is relevant to the case as a whole, we might as well get it out without technical problems about who was at bat.

THE WITNESS: What is the question?

(Question read.)

A Yes.

Q Now is it a fact that on March 20, 1969, Mr. Laeri told you that the Piper family was not prepared to enter into any agreement with Bangor Punta?

MR. PENNOYER: Same objection.

THE COURT: Same ruling.

A I can't answer that specifically as to that March 20th date unless you can help me in some way to refresh my recollection. But I know there was a time when some indication of this sort was made to me.

Q After that February meeting?

A Yes.

Q And would it help refresh your recollection that it was on March 20th if I show you your deposition at page 28?

I won't even bother reading it to you. You can look at this.

A Yes. That does refresh my recollection. I was so told.

Q By Mr. Laeri?

A Yes.

Q Did you read in the newspapers following that that the Piper Corporation had issued some stock to Southply and U. S. Concrete?

A I vaguely remember reading about that.

Q It is a fact, is it not, that you read the Wall Street Journal daily?

A I read the Wall Street Journal. Sometimes I am

a few days behind, but I read that Wall Street Journal, yes.

Q And were you, at this time, in March, following the doings in the Piper-Chris-Craft contest?

A Anything that is headed Chris-Craft or Piper I read.

Q Is it a fact that the next time that you had contact with a representative of the Pipers was after the Southply and U. S. Concrete acquisitions were rescinded?

A I just don't remember unless you can help me on it, again.

Q Well, do you recall that they were still speaking to you during the period that those shares were still outstanding?

A Subject to your, you know -- there is something in my affidavit that will help me on this, but the next thing I really clearly recollect was that April 20th meeting.

Q That the next meeting you had was on April 20, 1969, at the Yale Club with them?

A Yes, a Sunday.

Q And before that meeting were you told by Mr. Laeri that the Pipers were prepared to commit their stock

to Bangor Punta?

A I am sure I was because else I wouldn't bother with the meeting.

Q And when you went to that meeting did the Pipers tell you something different from that?

A Well, there was really two meetings occurred that day. I got there; there had been an earlier meeting, evidently, sort of a family meeting, I guess.

I don't know who-all was there. Art Long and members of the Piper family. I think Mr. Laeri, but that is subject to correction.

And then we had a meeting. I had Mr. Hutchins and Mr. Robertson with me at that time, and Mr. Flick came down from his home in Connecticut and joined us, and we discussed the possible going together of Piper and Bangor.

But then there was some inquiry came in from West Coast, and they were off again, chasing a fellow who was going to put up ten million dollars --

Is it fair to say that in the middle of the meeting the Pipers got a telephone call?

A Yes.

Q And did they report to you that there was somebody who was willing to put up, willing to consider

putting up $10 million to buy Piper stock?

MR. PENNOYER: Objection.

Q (Continuing) Did they report that to you?

MR. PENNOYER: Objection, your Honor, on the same grounds.

THE COURT: Overruled.

A Yes.

Q And, as a result, your discussions were discontinued?

A As a result I said I was leaving town, and if they got back to the conditions I had laid down, I would be glad to talk to them, but the time was, you know, moving along, and pretty soon nobody would be able to do anything, and I wasn't going to sit down until they were ready to come in.

Q Was it your understanding, Mr. Wallace, in these meetings that the Pipers were willing to consider Bangor Punta only in order to avoid Chris-Craft?

MR. PENNOYER: Objection.

THE COURT: Well, I think that you ought to put that question so that it does not forecast the answer.

Q Did you have an understanding as to the Pipers' purpose in talking to Bangor Punta?

A Their purpose in talking to us?

Q Yes, sir.

A Yes.

Q What was it?

A For Piper to become part of Bangor Punta.

Q And did they tell you why they wanted to become part of Bangor Punta?

A Yes. They said that if they could not be an independent company and be off on their own, which they vastly preferred, then if they had to be affiliated with anybody or associated with anybody, they would prefer Bangor Punta.

Q And did they discuss Chris-Craft with you?

A Chris-Craft was mentioned, I am sure.

Q Did they express their views about Chris-Craft in your presence?

A That they would prefer us to Chris-Craft.

Q Is that all they said?

A I am sure they said more. I can't give you the exact wording, but they said more, I am sure.

Q Now who is Mr. Galle?

A Mr. Galle is senior vice president of finance of Bangor Punta.

Q And did you, prior to May 8, 1969, ask Mr. Galle to make any cash projections with respect to acquiring

Piper?

A I am sure I discussed the acquisition of Piper with Mr. Galle. I am absolutely certain of that.

I don't have any firm recollection. If you can refresh me, fine.

Q Did Mr. Galle attend the April 20th meeting with Piper?

A I don't bolieve he did.

Q I show you Exhibit 75 for identification, which is a memo dated April 23, 1969, from Mr. Galle to a number of people, and your initials appear there, is that correct?

A Correct.

Q Did --

A My initials appear here, and this was taken from my file because my handwritten initial appears in the righthand corner.

Q So you read that document.

Now --

A Yes. I remember this. I don't know when I got it, frankly, because I was traveling directly after that April 20th meeting.

MR. LIMAN: I will offer this in evidence, and I will also offer Exhibit 74.

MR. PENNOYER: No objection, your Honor.

MR. RYAN: No objection, your Honor.

MR. PENNOYER: To either 74 or 75.

(Plaintiff's Exhibits 74 and 75 for identification received in evidence.)

BY MR. LIMAN:

Q I will put Exhibit 75 before you and I direct your attention to the first paragraph, now reading as follows:

"It is assumed that the Bangor Punta Corporation is going to acquire a majority of the outstanding common stock of Piper Aircraft Corporation as follows:" --

And then:

"150,000 shares from mutual funds at $80 a share," and then there is a line showing the total cost, of $12 million.

Is that the way you read that, Mr. Wallace, up to there?

A Yes.

Q Now had you been told on or about April 23rd that there were mutual funds that had Piper holdings totaling 150,000 shares?

A The statement was made, I believe. Mr. Long did

Q You also did not discuss it with Mr. Hutchins prior to --

A The same line of reasoning would apply to Mr. Hutchins as Mr. Robertson.

Q Would the same line of reasoning apply to your attempting prior to July 18, 1969, to determine the views of the Bangor Punta directors on the sale of the railroad?

A Yes, because the directors wouldn't know what they were talking about until they had all the facts. I wouldn't know what I was talking about, couldn't know what I was talking about until Mr. Priddle and Mr. Reames completed their studies. I am not sure that we shouldn't have been studying it through October.

Q Isn't it a fact from what you have just said that the directors acted on September 9, 1969, with inadequate facts before them?

A The directors may have felt that they had facts sufficient to make a decision. The fact of the matter is it would be my opinion that they did not have enough facts.

Q You recognize there is room for reasonable difference of opinion?

A Always.

Q Did you testify on direct examination that it was necessary to send your legal people to the Interstate

not participate in the meeting I had with Piper on April 20th, but he was leaving as I was coming in, and Mr. Long -- we had discussed, you know, a cash tender offer with the Pipers only on certain conditions.

I kept saying to them, "I am not going to put Bangor at some risk here, only if the Pipers participate in any loss resulting from cash tender offers or the lack of success of them."

And Mr. Long kept wringing his hands about some 150,000 shares that were in Fund of Funds and committed to the Chris-Craft people.

Q Did Mr. --

A That was the story I got. I heard it from Mr. Long that day, I think.

Q On April 20?

A Yes. And I probably recounted it to Mr. Galle.

Q And did you do some arithmetic that if there were 150,000 shares in funds committed to Chris-Craft, as to what percentage of Piper that would give Chris-Craft?

A Yes. I think that it would give them pretty close to the --

Q Fifty per cent, right?

A Correct.

Q So can you tell me how, on what basis you assumed in this memorandum, that you could acquire 150,000 shares from mutual funds?

A I didn't assume --

MR. RYAN: I object to the form of the question. The memorandum was prepared by Mr. Galle, not by Mr. Wallace.

THE COURT: I am familiar with that. I would just as soon avoid all of these forays. I am following the testimony reasonably carefully.

If Mr. Liman overstates the memorandum, you can rely on the fact that I will consider it accordingly.

MR. RYAN: Thank you.

MR. LIMAN: Let me withdraw that question, your Honor.

BY MR. LIMAN:

Q Did you tell Mr. Galle to make certain assumptions that are contained herein?

A I told Mr. Galle nothing, and I am sure I could not even have spoken to Mr. Galle between the April 20 meeting and the April 23rd, when this memorandum is dated because on April 20th, as soon as I came out of the

Yale Club, I went right out to La Guardia Airport and we took off for Tulsa, and I was then away until Wednesday and I -- the only people that I spoke to back in New York, to my recollection, was Mr. Flick and Mr. -- not Mr. Flick -- Miss Ackerman, who was my secretary, who would give me messages, and I think Mr. Galle, who is a very competent and good individual, would make assumptions himself actually to try to clarify our thinking.

Q And I take it that you do not know who communicated the figures in here in the memorandum to Mr. Galle.

A I do not have knowledge today of who communicated those figures to him.

Q Was Oppenheimer & Carr mentioned at the April 20th meeting?

A I don't recollect at this point.

Q Did Mr. Long say that if you were going to go for control of Piper it was essential that you obtain the shares held by the mutual funds?

A I think Mr. Long was disturbed by the large holding of Fund of Funds.

Q Did he say to you that it was essential to take those shares in order to get control of Piper?

A I have no recollection now of what he said or did not say, except that he was very gloomy and if I paid attention to him I think I would not have done anything.

Q Did anybody use words like "If you could take the block from under Chris-Craft you would have a good chance of getting control"?

A I don't recall those words. There must be some way of refreshing my recollection.

Q Can you identify Exhibit 76 for identification?

A Well, that is my memorandum, labeled "Confidential." It is initialed by me, signed by me, sent to Mr. Salgo, Mr. Robertson, Mr. Flick and Mr. Galle.

THE COURT: Dated --

THE WITNESS: And dated April 28, 1969.

This would be after my return to New York.

Q And this represented your thinking about Piper as of that date, am I correct?

A Well, I hadn't read it over, but I think so.

Q I would like you to read it over.

A You want me to read it over?

Q It is not a long memo.

A This is essentially the way I felt. This represented my best thinking. As a matter of fact I

think I dictated this memorandum into my machine at home one night. I think that's how this arose.

Q Now the first paragraph of this memorandum, the first numbered paragraph, states:

"The package of securities to be paid by Bangor Punta should be tied to the $80 market value figure at the time the offer is made and to a yield amounting" --

A "to a current dividend . .yield of $1.40 per share on the Piper stock."

Q Is that right?

A Right.

Q Mine was missing a word.

A Why don't you take mine?

Q Where did you get the $80 figure from? Had you had discussions of $80 at this date?

A There had been discussions of what we would pay. My recollection is, I wanted to pay around $70 to $75, and the indications that I got back was that you could not succeed unless you went up to around $80.

Q Who gave you those indications? First Boston?

A I would at this point say that would be accurate. I was relying on them for the feel of the market.

Q Now the next paragraph says:

"No cash should be paid out by Bangor Punta for shares of Piper unless Bangor Punta is certain of obtaining the 50.1 per cent control of the Piper stock."

A Yes. I felt that way at the time.

Q Now can you explain why you felt that way?

A Well, you see, the first discussions we had with the Pipers, I suggested that if -- that they -- I kept telling them, from January onward, that the longer they fanned around and delayed in coming to grips with this problem, the less sure was the chances of Bangor being able to do anything.

And I felt that the difficulties were all engendered by the Pipers, not by us.

So then I suggested to them that we form some kind of a joint venture, a joint undertaking and make a cash tender and that we would share any loss that was experienced if we were unsuccessful.

The family wasn't willing to share any loss, so then the next thought that I had was to buy the Pipers out first and then try to get the rest of it, but before we committed and tied a lot of cash, which we would have to borrow, into it, that we should be sure that we had

the 50 per cent.

Q Why do you attach significance to the 50 per cent?

A Why I attach to 50 per cent --

THE COURT: Did you finish your answer to the other question?

THE WITNESS: I really don't know. I don't think it's important.

THE COURT: All right, go ahead. The question is why you attached importance to 50 per cent.

A Because I felt that at 50.1 per cent we would be in a position at least to prevent anybody else from merging with Piper Aircraft, but nothing beyond that.

Q And is it fair to say that you did not want to be in a position of putting up cash if your interest could be merged up by Chris-Craft, for example?

A I did not want to put up cash unless I felt that I had a fair chance of getting all of Piper Aircraft into Bangor Punta.

Q Was this an overstatement in your memorandum, where you said that no cash should be paid out by Bangor Punta unless Bangor Punta is certain of --

A Well, it is not an overstatement, really, but I didn't live up to it because we in fact did put cash in

without getting 50 per cent.

Q Now --

A But that's what I would have liked to have done.

Q Now paragraph numbered 5 says that no commitment for the Piper acquisition should be given by Bangor Punta until the legal department --

A -- has had a chance to review all current and pending litigation between Chris-Craft and Piper as to determine its possible obligation to Bangor Punta.

Q And that represented your view at that time?

A Yes. Obviously there was a dogfight here and I wanted to make sure we understood where all the dogs were before we got in.

Q And paragraph 6 says:

"Clearance with both the SEC and the New York Stock Exchange should be obtained before Bangor Punta binds itself in any way to proceed with the Piper acquisition."

Is that correct?

A Correct.

Q Now can you tell me whether Bangor Punta ever sought clearance with the SEC before it issued its May 8th press release?

A No. I don't believe it ever did, but that's not the kind of thing I was talking about.

Q Well, what were you talking about when you said that clearance should be obtained before you made a commitment?

A Well, what I was concerned about was that there were all sorts of problems at this point running around in general.

You know, there was the Mills bill. There was a question as to the stock exchange putting limits on the number of warrants you could issue.

I didn't want to end up in a position where I had promised more than we could give.

For instance, you know that Mills bill was to have a limitation on debt, you know, how much you could deduct if you had too much debt.

Q Now did you seek clearance of any sort before you bound yourself in the May 8th, 1969, agreement? Did you seek clearance from the SEC of any sort?

A Well, this memorandum went to Flick, and I assumed if I did something after Flick got a memorandum like this, then that he was already agreeable to what I was doing.

I didn't go down and say, "Did you read my

memorandum?"

He was a highly competent attorney and I assumed if he didn't agree with something he wouldn't let me get into trouble.

Q Flick never called the SEC?

A Oh, no.

Q And when you were at the offices of Chadbourne on May 8th, you knew a telephone call had been made to the New York Stock Exchange to stop trading in this stock?

A I believe Flick notified the stock exchange so they would be aware of what we were doing.

Q Is it your understanding that on May 8th he called the SEC?

A I don't believe he called the SEC on May 8th.

MR. LIMAN: I offer Exhibit 76 in evidence.

Q I show you a copy of Plaintiffs Exhibit 44, which I believe is already in evidence, while the lawyers are checking that, and I ask you to read it to yourself, the part on Piper.

MR. PENNOYER: No objection.

MR. RYAN: No objection. That is Exhibit 76 for identification.

(Plaintiff's Exhibit 76 for identification received in evidence.)

Q Exhibit 44 contains an excerpt from your board or ex-cutive committee meeting of May 6, 1969; is that correct, Mr. Wallace?

A Yes. This is correct. I am reading it over now, and I certainly see nothing here to disagree with. It is my recollection of what took place.

Q And is it a fact that you pointed out to the members of the board present that, "The existing information indicates that about 104,000 shares of Piper are being held by several funds on behalf of Chris-Craft Industries, Inc."?

A Yes.

Q Did you --

A I believe, the information I got, they were emotionally committed to Chris-Craft.

Q Now, who gave you that information?

A I might have got it through Mr. Milne or somebody. I don't know. Somebody I had gotten it from.

Q Isn't Mr. Milne a public relations man employed by Bangor Punta?

A Correct.

Q Was it one of Mr. Milne's duties to find out where stock was placed?

A No, but Mr. Milne's duty was to listen to every broker and so forth that calls up.

Q Do you recall that you got that information from Mr. Milne?

A No. I don't recall it specifically. I am just saying he's a possibility. I don't know where I got the information.

Q The answer is, you don't recall where you got the information?

A I don't recall where I got it.

Q Was there any discussion at this executive committee meeting as to what you could do to obtain these shares?

A Well, I think there probably wa some discussion. I don't recall it now.

Q Now, on May 8th, were you told by First Boston how they valued the Piper family package?

A How they valued it?

Q Yes. What value they attached to it.

A No. They didn't discuss, I don't believe at this moment, unless you have some way to refresh my recollection, the method of valuation that --

Q Did they tell you what they thought it was worth, without discussing the method of evaluation?

A I don't recall that, unless you can refresh my recollection.

Q Mr. Wallace, let me ask you, on this subject: did you keep an appointment diary?

A I keep a little book, which I think now has somehow disappeared into all this litigation, because I was looking for it the other day, and I write into it, you know, if I have a date or, you know, I'm supposed to be some place.

Q Are you saying that you have been unable to find your 1969 book?

A It's some place, and I'll have to find it.

Q You haven't checked --

A It went down to the SEC. I guess it's been returned now.

Q You haven't checked before testifying?

A No.

Q In particular, you have not looked for your entries on July 29, 1969?

A No, but I think -- I think there was some refreshment of my recollection on that.

Q Mr. Ryan asked you a question about July 29th, and I will ask you now:

Is it your testimony that you did not meet with Mr. Gordon --

A No. I believe --

Q -- and myself on July 29th?

A No. I believe I met with you.

Q Now, do you recall being examined, in June of 1969, in this case?

A If you say so, you know, I was examined in this case in your office, I believe.

Q Yes. It was only one one occasion.

A Yes. That I recall.

Q And do you remember being asked this question and giving this answer?

MR. LYMAN: Page 101.

Q (Continuing) "Q Mr. Wallace, at the negotiation of this May 8, 1969, agreement, you were told, were you not, by First Boston that they valued the package that you were offering to the Piper family at $70 a share?

"A Not at $70. Around that.

"Q They said it was around $70 a share?

"A I believe so."

A Well, I think what I testified there was true. I just don't remember it now. I mean, I'm not denying it. I just don't remember it.

Q At the time you gave that testimony, that was your recollection?

A Then I would accept that recollection.

Q And --

A I just have no way of knowing it now.

Q Did I understand you to say a few moments ago that First Boston never discussed how they would arrive at their valuation of the package or how they arrived at the valuation of the Piper package?

A Well, you said the Piper package. I don't believe se ever discussed that. If there's something in there, I will accept it. I don't know what it was.

Q As you best recall now -- I am asking you for your recollection today, whatever today's date is -- do you recall any discussion with First Boston as to how they would value the package to be offered to the public?

A Oh, the public, yes.

Q Did they discuss that with you on May 8, 1969?

A Not to discuss it, but I think as a matter of curiosity, I may have asked Mr. Flick, or I may have asked Mr. Laeri, and they said they had a committee, and there was a great rigmarole. They had a whole group of experts that they put on this to value the pieces, the bond expert, the warrant expert and I don't know whatever expert.

Q Well, did they state what criteria they would use in any way?

A I don't now recollect such a statement. It may

have been; it may not have been. I don't know.

Q Was there any discussion as to the date as of which the valuation would speak?

A Well, always my impression was that the valuation was as of the date the securities were offered to the public.

Q Was it your understanding that it would be as of the date that your offer became --

A Effective?

Q -- effective by way of stockholder approval or otherwise?

A No. I believe it would be at the time that the offer was made to the public, because that's when it would have to be, at the time that the registration statement or the exchange offer was mailed to the holders of Piper stock.

Q And that would be so even if there had been stockholder approval subsequently?

A Thats my impression.

Q And that was your impression on May 8th?

A I don't know when it was my impression. It's been my impression for as long as I can remember. I don't remember whether it was my impression om May 7th or May 9th, but I know it was my impression.

Q Was there any discussion by the lawyers who were at the Chadbourne office on May 8th as to how this valuation

ANDRIES D. WOUDHUYSEN, residing at Puritan Road, Rye, New York, called on behalf of Chris-Craft, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ACKELL:

Q You are a member of the firm of Burnham & Company?

A Yes.

Q How long have you been a member of that firm?

A 15 years.

Q What did you do before that, sir?

A I was an employee of the firm.

Q In what capacity?

A An employee in the international securities department.

Q What did you do before that?

A Prior to that I was in the service of the Netherlands Government.

Q What was the nature of the service you rendered to that Government?

A International financial in nature, between 1947 and 1952, as financial attache at the Netherlands, the Netherlands Embassy in Washington, D. C.

Q Are you still engaged in that portion of Burnham's

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business involving international securities?

A Yes.

Q Would you explain what you do in that portion of Burnham's business?

A Dealing in securities of a variety of nations, between different markets, international investment banking transactions, raising capital in various financial markets for U.S. or foreign corporations, long term or short term. I think that about does it.

Q Are you now in charge of Burnham's international securities department?

A Yes.

Q Were you in charge of that department in January, 1969?

A Yes.

Q Prior to January of 1969, did you have any business relationship with Christ-Craft Industries?

A I personally did not.

Q Are you aware of any business of Burnham & Company in connection with Christ-Craft prior to January 1969?

A No, none other than that Burnham & Company may for its client have bought or sold theshares of that company.

Q Did there come a time in January 1969 when Chris-Craft did come to Burnham & Company?

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A Could you repeat that?

Q Did there come a time in January 1969 when Chris-Craft asked Burnham & Company to do anything?

A Yes.

Q When was that?

A The first moment that I became aware of that was the day before the last weekend, whatever date that exactly was, 28th, 29th, 27th -- it was on a Friday --

Q Friday, January 30,1969?

A Yes.

Q What were the circumstances under which you became aware of that?

A My senior partner, Mr. I. W. Burnham, phoned me in my office and asked me to join him in a discussion which he had, and when I entered his room I found a vice-president of Chris-Craft there --

Q What was his name?

A Mr. Len Gordon -- and Mr. Burnham, and I joined them in their discussion.

Q What was the substance of what was said at that meeting while you were present?

A Mr. Burnham briefly explained to me that Chris-Craft was in the process of making a tender offer for 500,000 shares of Piper Aircraft, and that they wanted to

acquire additional shares if more than 300,000 shares were tendered, and I was asked to give an opinion as to the feasibility of raising the money to pay for these additional shares in the Eurodollar market.

Q Was anything said while you were present about the intentions of Chris-Craft with respect to Piper?

A Yes, that they wanted to acquire control of Piper Aircraft.

Q Was there any discussion of the amount of money that might be required to achieve that objective?

A Yes. It was estimated somewhere between 20 and $25 million.

Q I believe you said you were asked for your opinion, sir.

A As to the feasibility of raising the money.

Q Did you give your opinion in the course of that meeting?

A Yes.

Q What was that?

A That subject to my checking further, I thought it could be done. That was a preliminary opinion.

Q Did you then check further?

A Yes, I did.

Q With whom did you check further?

A I phoned one of our merchant banking friends in London, and I phoned one of my partners, a partner of Burnham & Company, who is permanently residing in Brussels, Belgium, on the continent of Europe.

Q Before you get into the substance of those telephone conversations, can you place them in time?

A There were several telephone conversations --

Q When was the first one, sir?

A That was to my partner in Brussels.

Q On what day was that conversation?

A It was either Friday afternoon or during the weekend.

Q Friday, January 30, or during the weekend, February 1 or February 2?

A Yes.

Q What did you say in that first conversation?

A I discussed with him whether he also thought that it could be done, that this money could be raised, which he affirmed, and we sort of split up, he would contact a bank on the continent of Europe and I was getting in touch with the merchant banking firm of Singer & Friedlander in London.

Q When you say "he," you are referring to your partner in Brussels?

A Yes.

Q What was his name?

A Roger Jospe.

Q Did you then contact Singer & Friedlander in London?

A Yes, I did.

Q Whom did you contact there?

A One of the managing directors by the name of Francis Hock.

Q Did you telephone Mr. Hock?

A Yes, I did.

Q What did you say to Mr. Hock in that telephone conversation and what did he say to you?

A I briefly explained that we had a corporate client in the United States which was engaged in a take-over, in making a tender offer for stock and that this corporate client might wish to borrow between 20 and $25 million for a period of one to two years. I discussed with him whether he thought it was feasible and what his initial reaction was as to the terms of a loan of that kind.

Q Had you been told of the duration of the loan required previously?

A At the meeting at the office of Mr. Burnham I

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had asked that question, for how long the client wanted to borrow the money, and it was indicated to me that it would be for a period of one to two years. I had asked a number of other questions from Mr. Burnham and Mr. Gordon, the vice-president of Chris-Craft and I had expressed an opinion as to what I thought would be the approximate rate of interest and what other attractions a possible lender in Europe would require, and on the basis of the information from discussion I had with Mr. Burnham and Mr. Gordon, that Friday I talked to Mr. Hock and he indicated to me, he gave me his initial indication as to what he thought the terms should be.

Q Was there any discussion in that conversation as to when the funds would be required?

A I didn't hear that?

Q Was there any discussion in your first conversation with Mr. Hock about when the funds would be required?

A Yes. I told him that I had been told that the funds would be require quite promptly.

Q When were you told that?

A At that same conversation with Mr. Burnham and Mr. Gordon, on Friday.

Q Who told you what on that subject at that meeting?

A I would say most of the talking was done by Mr. Burnham, who tried to give me a brief description of what he

expected me to do, but what exactly the one and what exactly the other pointed out, I do not recall.

Q Whichever of the two said it, what was the substance of what was said with respect to when the funds would be required?

A One of the notes that I had made during that conversation on Friday in Mr. Burnham's room and during the telephone conversations I had subsequently, I find that I wrote down "We would want to know by 10:00 A.M. Monday," and this I would want to know whether this could be done by 10:00 A.M. Monday -- this I conveyed to Mr. Hock.

Q Is that your recollection today?

A Yes.

Q On Monday, you mean Monday, February 3,1969?

A Yes.

Q Did you identify your client in your first conversation with Mr. Hock?

A Not initially, but during that conversation at a later stage.

Q During the same telephone conversation?

A After Mr. Hock had --

THE COURT: Could you pause just a minute? There is an emergency matter that has to be attended to. We will take a short recess.

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(Recess.)

MR. ACKELL: Would you read the last question and answer?

(Record read.)

A After Mr. Hock had indicated that he felt that this money could be raised on condition that we were dealing with a well-known client, the stock of which was listed on the New YorkStock Exchange or on the American Stock Exchange, and after he had indicated to me what sort of a client he thought the money could be raised for.

Q At the time of your first conversation with Mr. Hock, what financial information, if any, concerning Chris-Craft did you have available to you?

THE COURT: At what stage did you disclose, if ever, the name Chris-Craft to Mr. Hock?

THE WITNESS: At the second stage of my first conversation over the telephone. I had several conversations over the weekend with him.

THE COURT: When he came back to you and said that under certain conditions and bearing in mind that it would relate to a Stock Exchange company and have certain standing, was he then mindful that you were thinking Chris-Craft or had you not yet disclosed that name to him?

A I disclosed that name to him after he explained

to me what the conditions would be

THE COURT: So he was reporting to you on a theoretical company until he explained these conditions, is that right? There is no company that he had in mind particularly, he was just talking about generalities?

THE WITNESS: He was talking in generalities and explained to me under what circumstances he thought it could be done and then I divulged --

THE COURT: When was that explanation given, what day?

THE WITNESS: The first telephone conversation I had with him --

THE COURT: When was this particular explanation and reaction given to you? Was that on Friday, Saturday, Sunday, Monday, Tuesday, Wednesday, when?

THE WITNESS: Either on Friday afternoon or on Saturday morning.

THE COURT: So that he reacted promptly and gave you the guidelines within a day or so, is that right?

THE WITNESS: During the one telephone conversation.

THE COURT: All right.

BY MR. ACKERL:

Q I asked you what financial data concerning Chris-Craft you had available to you at the time of your

conversation with Mr. Hock?

A I had a 1968 annual report of the company and I had a registration statement of the last financing that had been done for that company.

Q In your conversation with Mr. Hock did he make any statements with respect to his knowledgeability about Chris-Craft's financial condition?

A After I divulged --

MR. PENNOYER: Objection --

A -- the name of the company --

MR. PENNOYER: Objection, your Honor.

THE COURT: What is the objection?

MR. PENNOYER: Form. Leading.

THE COURT: Go ahead and finish your answer. After you divulged the name of the company, then what?

A He told me that he knew all about the company's attempt to buy the stock of Piper Aircraft, about the tender offer and, as a matter of fact, he then told me that he had just a couple of days before, and I made a note of the date, on the 28th of January, received a cable from another brokerage firm, White, Weld & Company, suggesting to him that he do not sell his Piper stock as yet, because they expected a higher price to be offered for the shares of Piper and he told me that he was fully familiar with the situation.

Q After that discussion was there any further discussion in that first telephone call with Mr. Hock?

A There was a second telephone conversation --

Q Have you told me everything that happened on the first one, sir, that you recall?

A No.

Q What else was said in that first conversation?

A He told me what he thought that the interest rate would have to be and he told me that his firm would require a certain amount of warrants to be issued, and I have some notes which I made during the telephone conversation as to the number of warrants he would require and the interest rate, the interest rate being 1-3/4 of one per cent above the International's bank rate for Eurodollars in London, and the number of warrants to be required would be 12,500 warrants if the loan were to be for 12 months, it would be 12,500 warrants per $1 million exercisable at $48. If the loan would be for 18 months, 17,500 warrants per $1 million to be exercisable at $48 per share, and if the loan were to be for two years, for 24 months, 22,500 warrants per $1 million exercisable at 48.

Q You mentioned an override over what you called the International bank rate. What do you mean by "International bank rate"?

A That is the interest rate at which banks, commercial banks and merchants banks lend Eurodollars amongst each other in London.

Q Do you recall what that rate was at the time of your conversation with Mr. Hock?

A Yes, I have a note here that says 7 per cent.

Q What was the effective rate of interest aside from the warrants that you were discussing with Mr. Hock in that conversation?

A 8-3/4 per cent.

Q Had you discussed the subject of warrants with anyone before your conversation with Mr. Hock?

A It had come up that Friday in the conversation with Mr. Burnham and Mr. Gordon.

Q What was said about it during that conversation?

A I had suggested that the lender might want some warrants to be included in the deal and consequently I was asked to find out if he wanted that in addition to the interest rate and how many warrants and at what price these warrants would be convertible into common shares.

Q Have you testified as to the entire conversation with Mr. Hock during your first telephone call?

A There is one other point but I don't quite remember -- well, I have reason to believe it was during the

first conversation.

Q What was that conversation?

A What was that I was very conscious of the fact that the company might not need exactly 20 or 25 million, but maybe less and, therefore, I asked him if he would be willing to make an arrangement under which the company would pay him a standby fee under which the company would borrow a fixed amount and merely pay a standby fee on any part of that amount which they would ultimately not take down.

Q Was there a discussion of the cost of such a standby arrangement if it were made?

A My notes indicate that during that telephone conversation he wanted warrants for the standby to the extent of 10 per cent of the numbers that I mentioned earlier. My notes do not divulge an interest rate in connection with the standby for the specific standby commitment.

Q What was the customary practice followed by you and by your firm in the arrangement of this sort, Mr. Would-huysen?

A Well, I personally do not start bargaining for a quarter of a per cent or a different number of warrants --

THE COURT: I think the question was what was the arrangement?

MR. ACKELL: Frankly it wasn't, your Honor. I

was attempting to develop what the customary procedure was of Burnham & Company and Mr. Woudhuysen in arranging loans of this kind.

THE COURT: All right.

MR. PENNOYER: I object, your Honor, to the question.

THE COURT: Go ahead, Mr. Woudhuysen.

A I took some notes and transmitted them at the first opportunity to Mr. Gordon.

Q I don't think you understood my question, sir. It is what your usual procedure is when you are asked to arrange a loan of this kind?

THE COURT: What is your interest in putting through a deal like this and how do you work it out?

A We would want a small part of the interest differential which the foreign bank adds to the international bank rate. In other words, they wanted 1-3/4 per cent on top of the international bank rate, and we would have asked them for a quarter of one per cent commission.

Q Is it your practice to make these arrangements by telephone?

A Yes.

Q Was this done in the course of your normal and customary procedures?

A Yes.

Q Now you referred to other conversations with Mr.Hock over the weekend. When did the next one occur?

A During that weekend, or Monday morning, shortly after I got to the office.

I do not remember exactly whether it was during the Sunday or on Saturday evening, or whatever --

Q What was the substance of the second conversation with Mr. Hock?

A He confirmed -- he confirmed to me that this was the way he thought it definitely could be done.

Q Now did you have any conversation with Mr. Jospe, your partner, in Brussels, over the weekend?

A Yes.

Q What was said in that conversation?

A I asked him to stay right on top of the situation with Singer & Friedlander, which is easier between Brussels and London. I wanted him to be fully informed, so I relayed to him what I had discussed with Mr. Hock, and I also asked him to check with one or two other banks on the continent of Europe in order to see if these rates were competitive or perhaps some other bank had more attractive terms.

And in consultation with each other we decided that he would check with a bank, a commercial bank in Amsterdam,

which is known to do this type -- known to be interested in this type of financing.

Q Did he report back to you?

A Yes, he did, and he reported back to me that they really could not give us an answer before ten a.m. Monday morning because this had to be brought up in a board meeting.

Q Who is "they," sir?

A This particular bank, which was the Hollandsche Bank Unie, and the managing director to whom he talked could not commit himself over the weekend to this.

Q What was the purpose of having Mr.Jospe become involved in this proposed loan?

A Well, if our client had said to us, "Go ahead, we want to close this," then he would have gone on a plane to London and finalized the arrangement.

Q Now have you told me the substance of all your conversations over the weekend with respect to this loan?

A Yes.

Q Now what occurred on Monday, February 3rd, concerning the loan?

A I called Mr. Gordon.

Q What did you say to Mr. Gordon and what did he

say to you?

A I think he wasn't in his office, and then he called me back, and I called him, and finally, in the course of the morning, we did get each other on the phone, and I told him on what terms we could arrange this loan, and I told him who the counter-party would be, that it would be Singer & Friedlander, which is a merchant banking company listed on the London Stock Exchange, and from there on I was waiting for him to give us the go-ahead signal.

Q Now were there any further developments concerning a loan from Singer & Friedlander to Crhis-Craft after February 3rd?

A On that Monday and on Tuesday and for several days I tried to get an answer from Mr. Gordon, but I couldn't get an answer from him, and I so advised my partner in Brussels in order that he may -- that he might tell Singer & Friedlander that there was no decision on it yet.

I see here a message of February 4th and another message to him, of February 5th, and --

Q Now were you talking about the same transaction in your communications with your partner?

A At that time, yes.

Q Now did there come a time when a different transaction was considered?

A Yes.

When no decision had been taken for about two weeks we urged Chris-Craft that they should take this money down, that they should make these arrangements, because itwas very attractive, and we told them that we could do this on a standby arrangement.

In other words, the cost to them would merely be the cost of the standby arrangement, and they would have the possibility to take $20 million down at any time during the next 12 to 24 months.

Q With whom at Chris-Craft did you have these discussions?

A All with Mr. Gordon.

Q Well, what did he say to you concerning such a standby arrangement?

A He led me to believe for a while that this was -- that they were interested in that.

Q Was such an arrangement concluded?

A No, it was never concluded.

And on the 18th of February I sent a message to my partner in Brussels saying that the company did not need the financing nor the standby arrangement.

MR. ACKELL: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. PENNOYER:

Q Mr. Woudhuysen, I believe you have referred on several occasions to some piece of paper in your file in the course of your direct testimony.

Would you show me those documents to which you referred, please?

A Here (producing papers).

Q Now going back to the meeting on Friday afternoon with Mr. Burnham and Mr. Gordon, I believe you stated that you understood that the funds would be required quite promptly.

Were you given anyidea of howpromptly, other than "quite"?

A Not very specific, but within a matter of days during the next week.

Q It was sometime during the next week?

A Yes.

Q Any particular day mentioned of the week?

A No.

Q Did Mr. Gordon indicate to you in the course of that meeting how many warrants Chris-Craft would be willing

to give?

A No. It was the subject of discussion but he did not indicate how many warrants Chris-Craft was willing to give.

Q Were any numbers mentioned at all, either by you or by Mr. Burnham or by Mr. Gordon?

A Yes. Mr. Burnham mentioned very roughly, after I had brought up the question of warrants, 10, 20 thousand, 15, 20 thousand warrants per million dollars.

Q And did Mr. Gordon make any comment with respect to any of those numbers?

A No.

Q Did he make any comment with respect to any possible requirement that Chris-Craft's stockholders' approval might be necessary in order to issue those warrants?

A No, not that I REMEMBER.

Q Do you recall any statements by Mr. Gordon regarding possible restrictions on unsecured bank loans to Chris-Craft?

A No, sir.

Q Was any mention made by Mr. Gordon of the terms and conditions of certain senior notes outstanding at the time?

A We did go briefly over the balance sheet and the other financials of the 1968 financial statement, devoted some general discussion to the various items on that.

I do not recall any specific discussion of any specific item other than, strangely enough -- but I remember that -- something about a TV station or radio station.

But we did go over the balance sheet and the other financial statements in the annual report.

Q Did you discuss with Mr. Gordon on Monday, when you called him back, the terms indicated by Mr. Hock?

A Yes.

Q And those included the warrants which Mr. Hock said would comprise part of the loan consideration?

A Yes.

Q Did you tell Gordon on Monday that the exercise price was $48 or would have to be $48?

A Yes.

Q And was that above the then market price of Chris-Craft, that is, Chris-Craft common?

A That I do not remember. I do not remember what the price was at the time.

Q Did you indicate to Mr. Gordon how long the

warrants were to be exercisable?

A Yes.

Q How long?

A I pointed out to him that they had wanted the warrants to be exercisable for five years, but I also pointed out to him at the same time that I had made no attempt to negotiate either this or any other condition, because I didn't feel that I was authorized to negotiate; I was simply trying to get the terms and pass them on to him, and that from there on it was up to him to let me know.

Q And thereafter, at any time, did you finally negotiate the conditions?

A No, sir.

Q Was one of the conditions mentioned by Mr. Hock the condition that Chris-Craft must get 50 per cent on its cash tender offer in order for the loan to be made?

A I don't recall that condition having been made.

Q Do you recall any discussion on that subject, that is, the likelihood of Chris-Craft getting 50-plus percent on its cash tender offer?

A I don't recall that.

Q What did Mr.Gordon tell you on February 18th as to why Chris-Craft didn't want the loan?

A I am not sure that I got this information from Mr. Gordon. I may have gotten that information from Mr. Burnham.

Q Well, regardless of from whom you got it, do you recall now the reason given for Chris-Craft's not wanting it, that is, not wanting the loan?

A No, sir.

THE COURT: Didn't you get any explanation of why they dropped the subject?

THE WITNESS: I am searching my memory and I remember that they were so involved in lawsuits that were coming up at that time, but I have no notes of that, and it would only be by assumption and not strictly memory, your Honor.

THE COURT: What lawsuits were pending?

THE WITNESS: I mentioned in one of the messages to my partner, Jospe, in Brussels, that in the early days of February the company could not make up its mind because it was awaiting a court decision which had been postponed, apparently, from day to day.

BY MR. PENNOYER:

Q Would it refresh your recollection if I suggested that this was a decision regarding the right of Chris-Craft to vote at the annual meeting of February 4th?

MR. PENNCYER: I have no further questions.

CROSS EXAMINATION

BY MR. WALDMAN:

Q Mr. Woudhuysen, during this second conversation, and in deed in the first conversation, you didn't have any conversation as to what your commission would be, correct?

A No, sir.

Q And it is an ordinary practice of your firm at some point to fix the terms of your commission with the lender, correct?

A Yes, sir.

Q But that time never came in this transaction, is that correct?

A That is right.

Q After your second conversation, and I am talking here about conversations with the Singer firm, you had a conversation with your partner in Brussels, correct?

A I had various conversations by telephone with my partner before and after these conversations with Singer & Friedlander.

Q You testified as to one particular conversation in which you asked for a report on the efforts of your Brussels partner to obtain the money. Was that before or after your second conversation with the Singer firm?

Q I will ask you whether you recall being questioned by me in June of 1969 as follows, and I think that it is page 90 and I believe that the context was in reference to how First Boston was valuing the Piper family package:

"Q Did First Boston tell you how they were valuing the components of this package.

"A They indicated a basis of valuation, yes.

"Q What was the basis that they indicated and who on behalf of First Boston indicated it?

"A Mr. Laeri was the man who talked to me about this and -- but he indicated he was talking with people on the First Boston staff. I never saw them.

"Q Did he tell you who he was talking to at First Boston?

"A He may have mentioned the name but I don't remember it now.

"Q How did he tell you he was valuing it?

"A They were valuing the common stock, the warrants and debentures and adding it together.

"Q How did they value the common stock?

"A Based on its value on the New York Stock Exchange.

"Q Do you know what the price was on the New York

Stock Exchange in May?

"A It was in the low 30's.

"Q Did he tell you how they were valueing the Bangor Punta warrants?

"A I believe he was using as a basis of his valuation the over-the-counter value of the warrants."

Then there were some questions about the warrants, and then going on, page 94:

"Q Was there any discussion of how First Boston would value the 5-1/2 25-year convertible debentures" -- I think it was 5-1/2 per cent --

A I thought it was 5-3/4.

Q "A Yes.

"Q What was said on that?

"A Well, Mr. Laeri felt that the convertible debentures were similar in its terms to the convertible subordinated debentures Bangor Punta had issued in connection with our Eurodollar financing that are traded in Europe and those are on the Europe Securities Exchanges, I believe in Paris, Antwerp and Rome. I am not sure where. I know he used that.

"Q What was the price that he used for that?

"Mr. Hogeland: If you know" -- Mr. Hogeland

being the attorney present for Bangor Punta on that occasion --

"A It was somewheres close to 13."

Do you recall giving those answers?

A Yes, and I recall them to be true. I did not recall them yesterday when I was testifying and I don't think they are inconsistant with what I said.

Q I wasn't suggesting that they were inconsistent. You did say that you did not recall the basis evaluation that he had mentioned and I wanted to know whether this now refreshes your recollection.

A First I want to apologize: I wasn't insinuating that you were saying -- I remember the testimony and it certainly is true and I don't know what else it does for me at this point.

Q Do you recall also yesterday when I asked you about your memorandum of April 28, 1969, which is Exhibit 76, and I asked you specifically about the paragraph No. 6 that refers to clearance with the SEC and New York Stock Exchange before you made a binding commitment with the Pipers, and do you recall giving this testimony, page 869:

"Q Well, what were you talking about when you

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(Pause)

A Yes, I have read it.

Q You recall that being in the press release you approved, am I correct?

A If I could see the final form --

Q This is the final form.

A This is the final press release, the way it went out?

Q Yes.

A Then I recall it.

Q Did you attach some significance to the fact that the Piper family was willing to recommend your company?

A I attached a great deal of significance to the fact thatthe Piper family was willing to recommend a merger with Bangor Punta and welcomed us as stockholders.

Q Had you been told prior to May 8 that Piper had a number of old and loyal shareholders loyal to the Piper family?

A Oh, I think I heard talk about old and loyal stockholders, which I didn't place any stock in.

Q Do you remember when you heard that talk?

A I can't remember when, but the only person I could probably have heard it from would be somebody connected with Piper, I would assume. If you have a way of refreshing my recollection, I woudl be happy to do better.

Q Instead of bothering to read this into the record, why don't you look at page 48 and page 49 of your examination before trial, which refers to the April 20 meeting (handing).

(Pause)

A Well, this testimony, my testimony given in my deposition, indicates this statement was given to me at the April 20 meeting, and I have no reason to think not.

Q When you say "this statement" you are talking about the statement that Piper Company had old and loyal shareholders?

A Yes, sir.

Q You said you didn't place any stock in this. Do you recall, Mr. Wallace, reporting to your board of directors that there are additional blocks of stock loyal to the Piper Aircraft management and family?

A I don't recall, but I well may have said it.

Q I ask you if you can identify Exhibit [illegible] for identification.

A Exhibit 65 is the May 21 minutes of the board of directors -- special meeting of the board of directors of Bangor Punta Corporation.

Q And at least part of this is evidence --

MR. KUSHNER: The part in evidence is a part relating to the railroad and --

Q Would you look at the part that relates to Piper Aircraft Corporation.

(Pause)

A Yes, this indicates I told the board that there were loyal and old stockholders connected with Piper Aircraft.

Q Does this indicate to you that youdidn't place any stock in that?

A It indicates to me that I personally didn't place any stock on it, but I thought it was a very good argument to use with my board of directors for going ahead.

* * *

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Q Now do you recall whether the Piper family's representatives asked you to agree to give the Piper family the same package as the public even if you didn't get 50 per cent?

A I don't recollectthat.

Q Well, who put the condition into this adjustment provision that you would have to get 50 per cent?

A Well, that goes back to the history of the negotiation. The negotiation with the family, where I said that I would not ...

Originally we had sought to have some sort of a joint venture with the family, where they would share our loss, and we would make a cash tender offer, et cetera.

There was some skepticism on that and then finally it was decided that we would move ahead, Banger Punta, on our own, in a sense, and I felt that we should not pay as high a price as we might have to pay to the public because the public thing really represented an auction and not -- and I therefore thought that since these people were asking us and inviting us to come in, they should share some of our risk and take a lesser price.

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Q But that if the risk turned out that worked in your favor and you got 50 per cent, you would be willing to give them the same as the public?

A Correct.

Q Now you testified yesterday at page 755 in connection with the block of securities from American Securities that Mr. Flick -- I am quoting:

"Mr. Flick had given me some guidelines as to what we could do and could not do, and I think I talked to him, and he felt it fitted within those guidelines, and we bought it."

Do you remember giving that testimony?

A Yes, I do recall that testimony.

Q Do you remember what Mr. Flick said to you as to the guidelines?

A Well, first of all, Mr. Flick felt that there were no restrictions, in any event, but felt that, you know, that was his legal opinion, but he also said that even if the Section 10(b)(6) applied there were certain exemptions which consisted of buying a large block unsolicited off a major -- not on any major exchange. That's my recollection now.

Q Did he mention anything about not buying from brokers or dealers?

A That's my recollection, yes.

Q Now is it your testimony that you told Mr. Flick that you were buying stock from American Securities?

A My recollection would be that, subject to some sort of refreshing.

Q And when you say "subject to some sort of refreshing," are you not positive?

A I am positive. If Mr. Flick says something else, you know, Mr. Flick's judgment and memory is a good one. I would have to rethink it. But I believe I told him American Securities.

I believe that -- my practice -- all I can tell you -- I am trying to do my best to remember this -- all I can tell you is my practice in this matter, as it was in most matters and is today, is anything I am concerned with the legal aspects of it I discuss it fully and completely with whoever the general counsel is.

In this case it was Mr. Flick.

Q Did you ask Mr. Flick to check with the SEC on 10(b)(6)?

A No, I don't believe I did.

Q Did you understand that American Securities Corporation was a brokerage firm?

A I don't think they are.

Q Well, are you saying that they are not a registered broker-dealer with the SEC?

A If they are, they are. Now I didn't think they were.

Q Did you inquire?

A I just couldn't answer that. I can't recall at this point.

Q Didn't you get confirmations from them?

A I think there was some kind of written confirmation that came from each of these people that we bought from.

Q And Bay Securities --

A I didn't receive them, incidentally. The confirmations don't come in to me. They go to the treasurer.

Q Now you testified that you spoke to Mr. Morey of Bay Securities.

A Yes, sir.

Q About Bay Securities stock?

A Yes.

Q Now did Mr. Morey tell you that prior to May 8th, Mr. Salgo had talked to him about Piper?

A No, sir.

Q Did Mr. Morey tell you that he began purchasing

his Piper stock after Mr. Salgo talked to him?

A No, sir.

Q Did Mr. Salgo tell you before Mr. Morey called you that you would be getting a call from Mr. Morey?

A Not to my knowledge.

Q Now you gave some testimony at page 753 of the record yesterday that ISI Corporation had something to do with the Crossman Arms transaction.

Do you remember that?

A Yes, and that's correct.

Q Was the purchase of Piper stock any part of the Crossman Arms transaction?

A Certainly not.

Q Now does the name Muriel Sebert mean anything to you?

A Yes, it does.

Q Had you met her prior to May 8, 1969?

A To my knowledge, I have never met her, talked to her or seen her.

Q Were you told that anybody at Bangor Punta had been in contact with Muriel Sebert after May 8, 1969?

A I don't recall.

Q Mr. Wallace, you understood that you were under an obligation under this agreement to commence, as of the

date you signed the agreement, trying to get control of Piper, didn't you?

A Say that again, please?

May I have the question read back to me?

Q Did you understand --

THE COURT: Read the question back so we don't have these cumulative questions.

(Question read.)

A No, not necessarily.

Q Well, were you familiar with the paragraph that begins:

"Beginning on the date hereof, Bango Punta will use its best efforts to acquire additional shares of Piper"?

A Yes. I am familiar with that.

Q Well, are you telling me --

MR.LIMAN: Withdrawn.

Q And were you familiar with that at the time?

A Yes.

Q And you took that obligation seriously, is that right?

A That obligation, yes.

Q And areyou saying that you didn't make efforts other than your exchange offer to acquire more shares?

A What I read that to mean is that if I think the appropriate time is to make the efforts on Monday, I do it, and if I think I will sit down and do nothing until Friday, I do it.

But I think that left tactics and so forth to us.

Q Well, was there somebody at Bangor Punta that took responsibility for trying to get these blocks that you had been told were emotionally committed to Chris-Craft?

A Not to my knowledge.

Q And you understood then that if these blocks went to Chris-Craft they would have almost 45 per cent of the company?

A Yes.

Q And it is your testimony that you sat back and waited for people to come to you with shares?

A Pretty much.

Now we may have bought some shares on the open market. I don't know. That would be a matter of record. I just don't know.

Q Well, who would make these decisions? Mr. Salgo?

THE COURT: What decision?

Q To buy.

A The decision to buy could only be made by either Mr. Salgo or myself.

Q Now you testified --

A Excuse me. I want to correct that a moment.

Unless we delegated it and the only person that I could think that I would delegate it to would be Mr. Flick.

Q Now you testified that Mr. Salgo had a conversation with Mr. Friedman.

Do you remember that?

A Yes, I do.

Q And it was following that conversation that Mr. Flick went to Nassau?

A That's correct.

Q Were you present at the conversation with Mr. Friedman?

A No. I was in Phoenix, Arizona, and Mr. Salgo was in New York when he met Mr. Friedman.

Q Were you in Phoenix, Arizona, talking to security analysts, among other things?

A I don't believe I saw a security analyst in Phoenix, Arizona. No, I did not.

Q Did you ask Mr. Flick to go to Nassau?

A Well, either I would have asked him or Mr. Salgo. I don't know who asked him.

Q You said yesterday that the transaction had to take place in Nassau for certain reasons, is that correct?

A Correct.

Q You understood what the reasons were, didn't you?

A They were Mr. Cornfeld's reasons, evidently, not ours. We had to go where the seller was.

Q And didn't you understand that there was a decree against IOS doing certain things in New York?

A I knew that IOS wasmt a very popular group and I can understand why.

Q And you said yesterday, at page 758, that there were technical problems re getting the money to them and other things.

A Yes.

Q Were you told that one of the technical problems was that a stock had to be taken from New York, where they held it, brought to Nassau, given to you there, and then brought back to New York?

A No, I was told no such thing. The technical problem I was referring to was that at one point they gave

for Chris-Craft to win the contest for over 50 per cent of the stock of Piper?

A No, sir.

Q I show you a copy of your original complaint against Chris-Craft dated June 2, 1969.

You are familiar with the fact that you filed an action against Chris-Craft and we sued you, am I right?

A I know that after you sued us we sued you, and that was with my authorization.

Q And if I direct your attention to an allegation in paragraph 11(d), reading as follows:

"Because of the large holdings of Bangor Punta and the Piper family, Chris-Craft will not be able to control the management of Piper or combine Piper's business with that of Chris-Craft."

Do you see that statement?

A I see the statement and this is evidently the complaint.

Q It is signed --

A Who signed it? Me?

Q It is signed by Mr. Ryan, dated June 2nd.

Did that represent your judgment at that time?

A No. It represented, in this sense -- it represented the feeling that I had and still have and which you know I have expressed over the last year many times, in the fact that 50 per cent or 43 per cent really makes very little difference because of the cumulative voting, because of the requirement of appraisal if there is a merger because of the fact that you have got two great big stockholders, and no matter which one owns that, you can't move.

What I am really saying in that, and what I would intend by that, what I would read that to mean is that at that point Chris-Craft could not control Piper and at this point we can't control Piper.

Q Mr. Wallace, are you mindful of the fact that with over 50 per cent of the stock of Piper, Bangor Punta has the power to compel a merger?

A I am absolutely aware of that but I am also aware of certain provisions on appraisal rights, too.

Q And you were mindful of that 50 per cent provision when you went into this acquisition?

A Certainly.

Q And do you recall testifying yesterday, when I showed you your memo, that the reason you didn't want to lay out cash for Piper, unless you were certain

of getting 50 per cent, was you did not want to be in a position where somebody could force a merger onyou?

A That's correct.

Q Now are you telling me thatyour present view is that owning 50 per cent or more of the stock of Piper really gives you no more influence and power than if you had 42 per cent of Chris-Craft?

A Well, I think the measure of influence and power is greater, yes, but, on the other hand -- and I would rather have 50 per cent than not have 50 per cent.

Q I was going to ask you whether you would trade --

THE COURT: Give him a chance to answer.

A But I also know that there are problems that go with it.

For instance, for the last year we wouldhave had to show Piper losses added into ours, which we wouldn't have to do if we didn't have the 50 per cent.

Q Mr. Wallace, do you recall when in Piper's fiscal year of 1970 it showed a loss for the first time?

A The loss -- Piper started the year profitably, and I can't give you the exact month but asthe year wore on, and the general aviation market declined, the monthly losses became more and more severe.

Then eventually I reached the decision to close the plants, and the loss was quite large.

Q As of the end of August, Piper still had a profit, didn't it, the end of August, 1970?

A End of August, '70, it could have, but it would have to be miniscule.

Q Now when you gave this testimony about the difference between 50 and 42 per cent, and your prior statements to that effect, you weren't suggesting that you would like to trade positions with Chris-Craft, were you?

A On just Piper?

Q I am not negotiating with you here. On just Piper, 42 per cent for 50?

A No. I am not suggesting that at all.

Q And when Mr. Salgo suggested that you might be able to liquidate Chris-Craft's position on an installment basis if you were successful in gaining control of Piper, was there any discussion then of the fact of power of appraisal?

A There was always the discussion that we would have to in some way treat with Chris-Craft, discuss and work a solution out with Chris-Craft.

Q And you would rather treat with Chris-Craft after

you had control than before?

A Absolutely.

Q Now with reference to this staement in the complaint about the large holdings of Bangor Punta in the Piper family, did you prior to July 18, 1969 -- that being the date that your prospectus became effective -- have any discussions with representatives of Bangor Punta or Piper about the fact that a fund owned by AVCO-Lycoming, the Paul Revere Fund, held some 20,000 shares of Piper?

A I believe that we were aware of the holdings of the Paul Revere Fund, yes.

Q And are you aware that those shares were tendered to you on your exchange offer?

A I think I recall that. I think that is true.

Q And did the Pipers tell you, prior to the time the shares came in, that they expected that they would be tendered to Bangor Punta?

A I don't think so. I think we were concerned with what they would do. We hoped that they would remain and support the Piper management, but we weren't sure, because no one had a way of knowing.

Q Did you ask the Piper management?

A We may well have asked the Piper management

of their appraisal of the situation. I don't recall at this time.

Q And do you recallwhether you asked First Boston Corporation?

A I don't recall asking First Boston.

Q Did the Pipers ever give you any figures as to the number of shares employees of Piper held?

A There may wellhave been. I don't recall it now.

Q Well, do you recall any numbergiven as "friendly" --

A No.

Q -- "shares"?

A No, sir.

Q Do you knownow, as you sit here, that shares that you received on your exchange offer were shares owned by Piper employees?

A I couldn't -- I am sure there were some shares received from Piper employees. I couldn't tell you now what they were, and I don't think that I ever knew.

Q Did you know that you got shares from Mr. Jamineau?

A I would assume I did. I don't know.

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Q From Mr. Poole?

A I would assume so.

Q Do you know whether any Piper employees exercised options to tender to you?

A I don't know.

Q Do you know how many shares you received on your exchange offer from shareholders other than Piper employees or AVCO -- and AVCO's Paul Revere Fund?

A No, sir.

Q Were you ever told that dealers of Piper and distributors of Piper had stock?

By dealers I mean of aircraft.

A Yes.

Q You were told that?

A I recall that very well.

Q And do you recall how many shares you received from Piper distributors?

A No, sir.

Q Now after your exchange offer closed, you made some cash purchases of Piper, am I correct?

A Yes, sir.

Q How did you handle the cash purchases from the Bango Punta end?

A I don't recall. I am sure any purchases that

Q In connection with making that decision did you have discussions with other representatives of the Bangor Punta Company, fellow executives?

A I may have. I have no present recollection of those discussions.

Q At the time you made the decision, had you been told that Chris-Craft had a six-month problem on some of its stock?

A I have heard that. I don't know when I heard it. It could have been before this period or after this period. I have heard it at some point.

THE COURT: What is the problem? You mean you have to pay somebody --

MR. LIMAN: The problem, your Honor, is that if you ended up with a decision such as the Occidental decision recently where the Court could take the value based on the offer of 80, even though if you liquidated it at 30 you would still be stuck with the higher valuation, so that when you finished paying your extra 16(b) penalty, you would have almost nothing left.

THE COURT: It sounds like the courts created a sanction against corporate raiding.

MR. LIMAN: I think Occidental could be read that way, your Honor.

Q You had told Chris-Craft prior to this July 29 meeting that Bangor Punta was determined to get control, had you not?

A I believe we had a meeting with Mr. Siegel and Mr. Gordon and yourself and Mr. Ryan, Mr. Flick and myself, at which that message was given.

Q Had you also told Mr. Gordon that his efforts were futile in that the Pipers had told you that if Chris-Craft got control he would find a bare plant?

A I think they were talking of a scorched earth policy. I think that is the kind of emotinalism that sometimes enters into these things.

Q You told Mr. Gordon about a scorched earth policy somebody at Piper had with you?

A Yes.

Q Who?

A I think it was Mr. William Piper.

Q William Piper, Jr.?

A Oh, not Senior. I apologize. Excuse me. It was Mr. William Piper, Jr.

Q Mr. Wallace, prior to your signing the May 8th agreement, you had visited the Piper plant, had you not?

A Yes, sir, I did, with Mr. John Lushing.

Q And that was on April 30?

A It is whenever date -- I think I testified to it earlier and I don't recall now what date it was.

Q And I think your deposition says April 30.

A Then I accept it.

Q Do you recall you at that time familiarized yourself with the various models of planes Piper had?

A I spent a very full day at Piper. I met with executives of Piper, I toured the Loch Haven plant, I saw each aircraft, I discussed the markets for those aircraft, et cetera.

Q Did you discuss the Pocono on that occasion?

A No, the Pocono was not brought up on that occasion.

Q Between the date that you signed the May 8 agreement and the time that your registration statement became effective, had you gathered any information on the Pocono?

A Well, before my visit to Piper I had information on the Pocono. I knew that there had been a deterioration in the so-called commuter plane market in the, I would say, period of mid-1968 onward. I did not know the particular production problems, the certification problems, of the Pocono at that time.

Q Did you know of any of the problems, what you call the particular certification problems, before your registration statement became effective?

A I knew the marketing problems that existed generally with airplanes of the Pocono type. I didn't know the particular problems peculiar to the Pocono until after I was into the management of Piper.

Q You became a director of Piper on August 11, 12?

A Well, whatever date it is.

Q August 12.

A August 12.

Q Are you the person who made a decision to stop the Pocono project?

A I was the person who made the decision to write-off the Pocono tooling and project. At one point I became chairman of the operating committee, a management committee, and that is where the decision was made.

Q You made that decision some time in August?

A No, I don't think that decision was actually made in August. That decision was made, really, and I tell you why I recollect it clearly: I had asked for engineering hours spent on the Pocono and then I asked for estimated engineering hours necessary to solve the single-engine certification problem, that is, you know, most twin-engine airplanes are required to perform in a certain manner on one engine before they can be certified by the FAA.

Q Did somebody tell you there was a problem?

A Yes. I asked them when the Pocono was going to fly --

Q Who did you ask?

A I could have asked Mr. Jamoneau, Bill Piper, or Pug Piper, I don't know.

Q Do you remember when you asked them that?

A It would be some time subsequent to the time I went on the board and before I met with Arthur Young at the meeting where they were preparing their certificate for the audited financial statements.

Q What was said to you by Mr. Jamoneau, or whoever it was, on behalf of Piper as to the problem?

A I think it started off that there was a small problem on the power plant for the Pocono, and then I asked them how much money we had spent on the Pocono, tooling, engineering time and so forth, and how much they estimated their time at. I think I also visited with AVCO -- well, not with AVCO, with the president of AVCO -- to see what AVCO had to say about the Pocono project.

Q When they said there was a small problem regarding the Pocono project, did they tell you the engine they had was not certifiable?

MR. BENNOWER: Objection.

THE COURT: Overruled.

THE WITNESS: They didn't say the engine was not

certifiable, they said the airplane was not certifiable.

Q Did they say that was because of the power?

A Correct.

Q Did you report this to Mr. Gordon?

A Yes, I believe I told Mr. Gordon, because I was making a practice of being very careful to keep all the directors of Piper informed as to what I was doing and what was going on, whether or not they agreed with it.

Q Did you report to him that the Pipers had built a plant without having power?

MR. PENNOYER: Objection.

Q Did you say that to him?

A I think I said they built a plant in Lakeland for the Pocono when they didn't have a Pocono.

Q Incidentally, the Pocono matter was not brought before the board of directors, was it?

A Yes, it was, at least in one way that I know of, because they we discussed, as you may be aware, Mr. Liman, at great length Arthur Young's certificate for the 1969 financial and in that was mentioned the writeoff of $500,000 for tooling on the Pocono and in that was implicit the whole discussion of the scrapping of the Pocono and to this day the Pipers disagree violently with me on my decision --

Q To scrap the Pocono?

A Yes, sir.

Q How much was written off in the 1969 year?

A Well, only 500,000, because Pipers follow a practice which I consider very sound and very good and which I think is standard practice in the aero industry, and that is to write off currently all developmental and experimental

work. So in other words all the work done on the Pocono to date had been expensed out against their income statement for the year in which they did it.

Q As part of your practice of reporting to the Chris-Craft people on what was going on at Piper, did you have occasion to report to them on the Twin Comanche?

A Yes.

Q What occasion had you, what caused you to bring up the subject of that place?

A Well, after I went on the board I asked for certain information regarding breakdowns of operating expenses, and so on, and I noticed that we were seeing an increase in product liability insurance. Then I talked to, I believe -- I think it was Bill Piper and he suggested if I wanted more information I should talk to the insurance people. So then I scheduled a meeting in New York at which I believe Mr. Poole, from Piper, attended and Mr. Flick and myself, and the man who runs the internal insurance department, Mr. Kline, of Piper, and the outside insurance broker and the company that was doing the underwriting, to discuss the trends of insurance costs.

You know, you are always suspicious of things like insurance being given to somebody's brother-in-law

and I was trying to figure a way to bring insurance costs down, and I then learned that insurance costs were increasing for two reasons: One, that there was a trend in the country generally to return sizable verdicts in general aviation accidents and, secondly, I learned that there was a particular problem aircraft in the PA30.

Q Who told you that?

A The insurance people.

Q What did they say the problem was?

A They said that the PA30 had had a great many accidents and this was used as another example of why the price of the insurance had gone up, along with the general rise because of the general condition, you know, of higher jury verdicts.

Q Did you request the Piper Company to send out warning to the owners of the Twin Comanche?

A I didn't request it, I ordered it.

Q When?

A In September of 1969.

Q You took that responsibility on your own?

A I took that responsibility.

Q Was that the result of this information that you got at the meeting with the insurance broker and Mr.

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Poole?

A No. That was the result of that information and other information that I gathered by talking to people like Mr. Jamineau, Mr. Pug Piper, etc.

Q After you sent out the warning to the pilots, the Twin Comanche became the subject of a good deal of discussion at the board of directors of Piper, am I correct?

A Yes, sir.

Q And, in fact, it also became the subject of discussion between you and the Chris-Craft people.

A There was a great deal of discussion, yes.

Q Do you recall that there were various efforts made to find a third party who might be willing to buy out both positions, efforts by Chris-Craft?

A There were efforts by both of us, but not as a result -- I don't key that into the PA30 --

Q I am not suggesting that. Did you in the course of those discussions with the Chris-Craft people tell them that the PA 30 problem would affect the price that a purchaser might be willing to pay?

MR. PENNOYER: Objection.

THE COURT: Overruled.

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A I think what I told them was, and I don't think there was any disagreement between either Chris-Craft or Bangor Punta on this subject -- I think what I told them is that if we were to sell our interests in Piper we had to make full disclosure of all problems as well as all the good prospects of the company, and the PA30 was one of the problems.

Q Was the PA 30 a problem that led you to vote against a dividend in Piper in November?

A It was a factor -- not the major factor.

Q When you say it was not the major factor, what was the major factor?

A I was extremely concerned -- we have a close relationship in both companies, both Chris-Craft and Bangor Punta, in that we are both in the boating business and I think there is a correlation between the boating business and the aircraft business in terms of when the economy turns down, those businesses turn down. I think you can find a correlation between the aircraft business and capital good expenditures and I was worried the aircraft business would turn down and I was already starting to counsel my people in my boating group that we ought to be thinking about cutting inventories and

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production and therefore I thought we should be following conservative policies in both Piper and Bangor.

Q You were cutting inventories in Piper in November 1969?

A I was hoping to, but we didn't have much success.

Q Do you recall whether at a meeting on November 24, 1969, the Chris Craft people asked for the declaration of a dividend?

A Yes, I recall that Chris-Craft was pressing for a dividend and I felt it was not a good idea and my fellow directors agreed with me.

Q You understood that Chris-Craft had short-term financing for its company?

A I understood Chris-Craft has debt and I think I have some familiarity with it. I am just not sure what you are saying.

Q Wasn't there a discussion at the Bangor Punta board of the fact that Chris-Craft might come under pressure from its lenders?

A Well, I think we were hoping that you would come under the same kind of pressure that we came under.

Q Were you hoping that if we came under that kind of pressure, you could pick up the block cheap?

A This is all true, and I remember the circumstances of this statement very well.

Q What did you have in mind when you told the board that Chris-Craft's demand loan had to be settled soon?

A What I had in mind was, and this goes back to Mr. Salgo's remarks about an installment sale, and various meetings I have had with Mr. Siegal and Mr. Gordon, that I thought it was unrealistic for us to think in terms of any settlement with Chris-Craft which didn't involve getting over to them enough money to cover their short-term indebtedness.

You know, Bangor Punta is not really the richest company in the world and we have a lot of debt ourselves and I was concerned that our board understands that we could not accomplish this unless we gave Chris-Craft some means of paying off their debt.

Q You were not waiting, were you, for Chris-Craft's lenders to call the loan?

A I wasn't waiting for it; I would have been delighted if they had

Q Is it still your intention to merge Piper into Bangor Punta?

A There is a court order against it, or a

stipulation or something. I know I keep being told you can never do this because of some --

MR. LIMAN: I have only about four or five minutes more, your Honor.

THE COURT: Go right ahead.

MR. LIMAN: If I could finish it now, your Honor --

THE COURT: All right.

MR. LIMAN: I have just added a few minutes, your Honor. I am covering some questions for Mr. Kushner too.

THE COURT: I suppose you would like to finish --

THE WITNESS: I would be delighted, but I will stay as long as I have to, your Honor.

THE COURT: Is anybody else going to ask any questions?

MR. PENNOYER: I have a few, your Honor, but I don't think it will be more than a few minutes.

THE COURT: We will recess for lunch.

(Luncheon recess.)

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Q When you told Mr. Laeri or Mr. Arning that a change would be -- strike that -- that there was a possibility at some point that a change would be made on our holding of the Bangor and Aroostock Railroad, do you recall what in substance you said?

A May I see that answer again, please?

Q Sure (handing).

A There is something there that troubles me.

(Pause)

A You are saying I told them; I don't think I did the telling. I think Mr. Flick was doing most of the talking. I am not disagreeing with what was said here, but I said in my testimony "I believe Mr. Flick and myself -- that where we did discuss the railroad and the possiblity at some point that an exchange would be made in our holding of Bangor and Aroostock" -- these were meetings when they were reading and going over the registration statement and I was not in charge of the meeting, it was Mr. Flick's show.

Q So your testimony is that whatever was said to Mr. Arning on the railroad it was Mr. Flick who was doing it, not you?

A What I am saying is I am not sure if it was

Mr. Flick or I but I suspect it was Mr. Flick.

Q Do you remember being present when it was discussed?

A Yes.

Q Do you remember what was said?

A Only that we had, I think, to outline our discussions with Dumaine and some of the past flavor of what went on in the railroad to give them an idea of what we felt about it.

Q Did you tell them that Salgo's proposal in the May 21 minutes was not a serious one?

A I don't recall that.

Q You testified that in a showdown between Mr. Robertson and Mr. Salgo, you would bet on Salgo? Do you remember that?

A Did I say it that way?

Q I think you did.

THE COURT: What page is that?

MR. LIMAN: 849, I think, your Honor.

A I didn't use the word showdown --

Q "Bet" I meant.

A I said I would bet on Mr. Salgo.

Q In fact, you would give some odds on Mr. Salgo,

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JAMES J. ROCHLIS, called as a witness by Chris-Craft Industries, Inc., being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ACKELL:

Q Mr. Rochlis, are you an officer of Chris-Craft.

A I am a director, executive vice president of the Chris Craft Industries, president of the boat division and president of the Industrial division.

Q What position did you hold in Chris-Craft in January, 1969?

A In January 1969 I was a director and vice president of Chris-Craft Industries and president of the Industrial division.

Q Mr. Rochlis, would you briefly sketch for us your background up until approximately 1960?

A I was associated ten years or eleven years prior to 1960 with Blair & Company, originally as E. H. Rawlins & Son, which was an investment banking house, and in addition to acting as a registered representative I was also a financial analyst with the company.

Q Would you describe what you did as a financial analyst in those years?

A I would review companies that were seeking public financing, primarily, and in doing this I would meet with management to appraise management, review their financial statements visit their facilities, discuss their product lines, their future, trends, etc.

Q In the course of your duties at E. H. Rawlins, did you meet Herbert Siegel?

A At that time the company had merged and was called Blair & Company and I met Herbert Siegel, I suppose, in 1958 or '59.

Q Did a relationship between you and Mr. Siegel develop after that point?

A Yes.

Q Would you describe it, please?

A I began to handle some investments for Mr. Siegel in terms of his personal investments and at a later date I also handled some investments for his wife.

Q Did there come a time that you joined in business with Mr. Siegel?

A Yes. We undertook to purchase some securities in a group of companies. This was probably in '59 and eventually we purchased control of these companies and then merged several other companies into them.

THE COURT: What was Mr. Siegel's business in 1959?

THE WITNESS: In 1959 -- I am not sure whether it was '58 or '59, but he was chairman of the board of the Seaberg Corporation. When we got into business together he then resigned as chairman of Seaberg.

THE COURT: Was that a finance company?

THE WITNESS: No, that was a manufacturer of jukeboxes at the time. The largest manufacturer of jukeboxes.

THE COURT: What was the company that you and he purchased control of in 1959?

THE WITNESS: We purchased a major interest in a company called Baldwin Rubber Company and while we had a major position in this company we purchased control of Centlivre Brewing Company. The control that we secured in Centilever Brewing was secured by an arrangement with the family that was at that time in control of the company, a voting trust, and so on.

Q What was your role in the acquisitions that you have just described to the Court?

A In Centilever Brewing?

Q In each of the transactions you described in answer to the judge's question.

A I made the analysis on the Baldwin Rubber Company, which had several subsidiaries. We knew that Baldwin Rubber was a company that was in serious trouble and the management indicated that they probably would have to liquidate it.

We had discussions with them on the concept of the possibility of trying to alter the nature of the business and possibly saving it and, if that didn't work, liquidating at a later date.

In the interim they had a subsidiary called Monosol that had a net worth at the time of about $600,000 and it was my judgment that that company was worth a great deal more, and, as it turned out, we earned about nine to ten million dollars in operating that business in about a nine-year period despite its low net worth.

In the case of Centlever Brewing Company, together with one of our present directors, David Lamb, we analyzed the Centlever as to suitability for a shell to be the receptor, so to speak, of these other acquisitions.

In order to accomplish that, Centlever Brewing was listed at the time on the Midwest Stock Exchange and

we then merged two companies into Centlever Brewing, and one was the Baldwin Rubber Company and another was Montrose Chemical Company, and then the name of the company was changed from Centlever to Baldwin-Montrose Chemical Company.

This three-way merger occurred, I believe, in mid-1961.

Q When was Baldwin-Montrose merged with and into Chris-Craft?

A I don't recall the specific date.

Q In the middle of 1968?

A Yes, about that.

Q From the time that Baldwin-Montrose merged into Chris-Craft until the end of December, 1968, would you describe your duties and responsibilities at Chris-Craft?

A I was operating the industrial properties of the former Baldwin-Montrose Chemical Company together with industrial properties that we acquired by virtue of the merger into Chris-Craft.

They also had a number of small industrial enterprises and we immediately began to combine them to the mutual advantage of the entire industrial package.

THE COURT: What year did you say Chris-Craft was merged into this group?

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THE WITNESS: 1968, I think it was.

THE COURT: Was there any other corporate acquisition or transaction that you and Mr. Siegel performed between 1961 and 1968?

THE WITNESS: Yes, there would be a few more. I might point out ththat before we merged Baldwin Rubber Company and Montrose Chemical into Cantilever Brewing, we purchased controlling interest of General Artists Corporation into Cantilever Brewing, and then we made the three-way merger.

In so far as acquisitions and actual control of companies, I think nothing much occurred beyond the Chris-Craft incident.

Q Would you complete your answer describing your duties, please?

A Yes.

So that I undertook to combine the industrial properties we brought to the picture, plus those that existed in the Chris-Craft enterprise, and at the same time began to get involved in the boat division's operations and continued on with the business of keeping myself informed and keeping my records up to date on various investment opportunities -- this is something I had been doing for a long period of years and it was an activity that

required about, say, 20 or 25 per cent of my time.

Q Did you have any particular kind of system with respect to the records of investment opportunities that you referred to?

A Yes. I was on the mailing list of possibly 200 companies, listed companies and unlisted companies. This list consisted of companies in which we conceived that there could be interesting investment possibilities, on the one hand, but also consisted of companies we sold our products to, and it consisted of companies that were major suppliers to us.

Inthis way, by perusing their annual reports and other data I was able to stay abreast of many things in which we had interests.

Q In general terms, what was the other data which you just referred to?

A Well, I read a great number of trade journals in a wide variety of industries in which we have continuing interests, and I read Moody's Manual, Standard & Poor's, Forbes, Barron's, Value Line, other services, and oftentimes I will clip these articles and make them a part of our filing system.

Q How would your investment opportunities section actually be used?

A Well, the idea was to keep the files as current as possible. Certain employees at Chris-Craft had this responsibility, under my supervision.

The practice was to on receipt of the annual report affix certain information to the cover of the report and then these reports were put on my desk and I would undertake to read them and oftentimes I would underline or underscore certain things or make notes that I would pass on to other members of the firm and we either would develop the complete range of data for those reports or else we would file them just the way they were.

But I would undertake to read them before they were put into the files.

Q Would Mr. Siegel or the other officers of Chris-Craft make requests of you for materials in those files?

A Yes, very frequently.

Q During 1968 did this system of yours include information on general aviation companies?

MR. PENNOYER: Objection.

A Yes.

Q What companies?

A The files had contained separate files on Beech Aircraft, Cessna Aircraft, Piper Aircraft, Karan

Aircraft -- many small companies such as Custer Helio, possibly another half dozen very small ones.

Q Prior to December 30, 1968, had you been present at any conversations at Chris-Craft with regard to any companies in the general aviation business?

A I remember two instances during 1968, and one was a discussion with Virgil Sherill of Shields & Company as to the possible interest if an arrangement could be made out with Beech Aircraft as to the possibilities of it being a good acquisition or a good merger with Chris-Craft.

Virgil Sherill thought that it made some good sense and we discussed general aviation at quite some length.

At that point in time he also pointed out that he knew of another aircraft company that was seeking financing and as a result of that we met with Ted Smith Airplane Company and we made an analysis of that situation, but the end results was that we did not go forward with it after we made the analysis.

Q I show you Plaintiff's Exhibit 82 for identification, Exhibit 83 for identification, Exhibit 84 for identification, Exhibit 85 for identification and 86 for identification.

I ask you if you can identify each of those documents for me (handing).

A Do you want me to identify them individually?

Q Yes.

A These have all come from my files, I see.

The first one is an article from Business & Commercial Aviation dealing with the general business aviation outlook in 1968.

Q Is that Exhibit 82 for identification?

A That is 82.

83 is an article from Forbes dated November 1st and it is specifically on Piper Aircraft.

84 is a copy of the 1965 annual report of Piper Aircraft.

85 is a copy of the 1966 annual report of Piper Aircraft.

And 86 is a copy of the 1967 annual report of Piper Aircraft.

All of these items have come from my files.

Q While looking at those exhibits for identification can you tell me when you acquired them?

A In some cases, yes, I can.

The Forbes article I would have acquired roughly at the time it was published.

The 1965 annual report would have been acquired about a month after the company mailed the report.

The 1966 annual report, about the same.

And the 1967, about the same, about a month after issuance, roughly, by the time it gets to my desk.

Q Were each of those documents in your file prior to December 30, 1968?

A Yes. There were other documents in my files, too, other than these. I don't know where they would be.

Q What other documents were included in your files as of that time?

A I had annual reports going back about another three or four years. I don't see those here. There were some Value Line studies and some other studies of other investment services. There were also some Xeroxes of Moody's Manual, and I think I also had in there the Stanford Research Institute's review of the general aviation industry, and Standard & Poor's Industrial Survey on the aircraft industry.

Q I show you Exhibit 85 for identification, which is the Piper 1966 annual report.

I refer you to the label appearing on the cover. Can you tell me the circumstances under which that label was

placed there?

A These labels are placed on these reports as received by employees at Chris-Craft, operating under my supervision, and normally what they do is put the price and the date of the securities and then these go to my desk, and at that point, depending on my state of interest in a particular company, it will go into the file at that point or else I will hand it back to the people doing this work and ask them to complete the label. If they complete the label they will show on it the state of incorporation and whether or not there is cumulative voting --

Q Would you explain what appears on what particular label?

A This label shows the state of incorporation, the fact that there is cumulative voting, the price-earnings ratio -- you don't want the figures?

Q No.

A Price-to-book ratio, the current price, number of shares outstanding, net per share, book per share, dividend per share, and the gross earnings.

Q When were these statistics placed on that label?

A These were placed on here March 17, 1967.

Q Now, during 1967, were there any discussions at Chris-Craft concerning Piper Aircraft?

A I don't recall.

Q Mr. Rocklis, did you read Exhibit 85 for identification at the time you received it?

A Yes.

Q Can you tell by looking at that exhibit today of what matters were of particular interest, if any, to you at the time you received that report?

A Well, I tend to underscore as I read, and just going on the basis of the underscoring at the time, I see here that I understood the fact that they had lost some production by virtue of an employee strike, the fact that they had 18 setbacks in production that year, and some comment here about the fact that the Pony was the most widely used agricultural airplane in the world.

There was a reference here to a number of twin aircraft that the company delivered, that I took note of, and expenditures for facilities, which struck me at the time as being rather high, about four-million-three in that year. Some more reference to the effect of the reduction in cotton acreage on their sales of the agricultural airplanes, and the effect of the strike on curtailed deliveries of Aztecs

and Iwin Comanches. 1918A

And basically, that's about what I was looking at at that time.

Q I show you Exhibit 86 for identification, which is the Piper 1967 annual report. Can you tell me when you received that report?

A Around March 1, '68. That's when it came to my desk.

Q How can you tell that, Mr. Rocklis?

A From the date on the label.

Q Did you read that report at or about the time you received it?

A Yes. I would have read it about that time.

Q Now, can you tell me by reviewing that exhibit what matters if any you regarded as significant at that time?

A Right. I underscored the profits of the $1.83 compared to $4.23 in the prior year and the reasons for the decline in earnings, and the information here on the Navajo airplane, which was very upbeat, and some comment on the agricultural airplane and things that were affecting sales there, and the reference to the fact that the Navajo was enjoying success in terms of sales, that they were preparing a turbo-prop Navajo. I thought that was good.

That's about it.

Q I show you Exhibit 82 for identification, which is an April, 1968, excerpt from Business & Commercial Aviation Magazine. Are those underlinings appearing in that exhibit -- are those yours?

A Right.

Q Did you place those on there at the time that you first read it?

A Yes.

Q Can you tell me approximately when that was?

A I have a little trouble fixing the date on what as to when I read it, but it would have been within, say, a month or so of when it was published.

Q I show you Exhibit 83 for identification. Are the markings appearing on that exhibit yours?

A They are.

Q Can you tell me when you placed them on the exhibit?

A Probably at the time I read it and put it in our file, which would have been the first week in November of '67.

Of course, I marked this a number of times since. This -- you want me to comment on these underlinings in any way?

Q No.

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A No? Okay.

MR. ACKELL: I offer Exhibits 82 through 86 for identification into evidence.

MR. PENNOYER: May we have a minute to examine them, in view of the markings?

MR. ACKELL: I would be agreeable to counsel for the defendants examining these exhibits at their leisure, in the event they have objections.

THE COURT: You can examine them now.

(Pause.)

MR. PENNOYER: Piper has no objection to the exhibits listed by Mr. Ackell.

THE COURT: I am not sure the stenographer heard all your words. Has no objection to what --

MR. PENNOYER: To the exhibits listed on the record by Mr. Ackell on the last offer.

THE COURT: Received without objection.

(Plaintiff's Exhibits 82 to 86, inclusive, for identification received in evidence.)

Q Mr. Rocklis, prior to December 31, 1968, were there any discussions at Chris-Craft concerning Piper Aircraft Company, at which you were present?

A Q -- during 1968?

Q Yes, sir.

A Not to my knowledge.

Q When for the first time did you learn that Chris-Craft had purchased shares of Piper stock?

A I received a call on January 2nd. I was on vacation in Barbados, and I received a call from Mr. Siegel.

Q January 2, 1969?

A Right.

Q Now, what did Mr. Siegel say to you in that telephone conversation?

A Well, we first covered some general business matters, and the second point that we covered was the fact that he had purchased approximately 5000 shares of Piper Aircraft, and related to me the reasons he thought it would be a good purchase at the time. And I agreed with him. I said it sounded like a very attractive purchase.

And we came to an agreement that he would continue to acquire some stock if he could, until I got back. He was rather anxious to know if I intended to come back on the 6th, as I had originally said I would, because he was anxious that I would update the file. And I said that I did intend to be back on the 6th.

Q Now, what did Mr. Siegel say, as you described, that made him feel the purchases were good purchases?

A Well, I don't recall all the things that we talked

about, but it basically had to do that the price-earnings ratio was relatively attractive as to what it had been earlier in the year. As I recall, the stock had been up -- I don't know -- maybe around 28 or 30 times earnings at one time. And we liked the outlook for the industry, as you know, and we liked the outlook for Piper, also, and we knew that Piper was heading into some part of the market that Beech had always had a very strong hold on, and that was bullish, we thought.

And, generally, the timing seemed right. The stock was in the market on a somewhat depressed price in relation to its prior earning, and it was apparently fairly easy to buy. There was some disenchantment in Wall Street with the company, and it was an ideal time to acquire a position.

Q Now, did you return to the office on January 6th?

A Yes.

Q And did you meet with your fellow officers at Chris-Craft on your return?

A Yes; I did.

Q And was Piper a subject of discussion when you returned to Chris-Craft?

A Yes. We had acquired more shares in the interim, and there was great pressure on me to get myself updated and to update the rest of the group on the current affairs

of the company and the outlook to assure that we were on the right track.

Q Now, who encouraged you to update your material?

A Mr. Siegel.

Q Now, do you recall when he did that?

A On January 6th.

Q Was there any other discussion about the Piper purchases that had already taken place?

A Not really. I reviewed the purchases, but there wasn't any need for discussion, because the price -- the purchases were all taking place about the same price range, and the comment was that these securities were coming in rather easily, indicating that there was some disenchantment in the market as regards the price of the stock.